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DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, NOVEMBER 5, 1853.  
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STATE OF LAW REFORM.

GOVERNMENT COMMISSIONS AND COMMITTEES.

On the commencement of another Legal Year and a new Volume of our Work, it may be useful to take a brief review of the various proposed Law Reforms now under the consideration of the Profession and the Public. So many alterations, if not amendments, have already taken place, either to modify or destroy the Law and Practice which formerly prevailed, and, in the haste to alter, so much mischief has resulted, and the work has been so imperfectly done, that the whole system must now be subjected to a searching revision. Probably some things which have been abolished must be restored,—some reforms must be carried further, or greater evils will arise than those attempted to be removed,—and a systematic plan must be carefully settled for future guidance.

This is no individual opinion, nor the sentiment of a few only, but has been adopted and acted upon by the Government itself, and with the general concurrence of leading men of all parties. There are no less than seven Commissions now in existence for the purpose of inquiring into all the large and comprehensive branches of the Law, and to report on the amendment thereof. Let it be recollected that these inquiries and reports are to be made after the self-elected, or amateur Law Reformers have been actively at work for 25 years. Let us hope that, under the guidance of the several bodies of Commissioners, the course of future legislation will be more complete and satisfactory.

The new Commissions, as our readers are aware, are as follow:—

1. The Bankruptcy Commission, consisting of—
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ing of the Right Hon. Mr. Walpole, Sir Geo. Rose, Mr. Swanston, Q. C., Mr. Commissioner Hill, Mr. Bacon, Q. C., Mr. Commissioner Holroyd, Mr. E. Cooke, Barrister-at-Law, and Mr. Glyn; with Mr. F. S. Reilly, Barrister-at-Law, Secretary.

2. The County Court Commission, at the head of which is the Master of the Rolls, and the other Commissioners are:—Mr. Justice Erle, Mr. Justice Crompton, the Hon. Mr. Fitzroy, Mr. Keating, Q. C., Mr. Koe, Q. C., Mr. Serjeant Dowling, Mr. J. Pitt Taylor, and Mr. Mullings, M. P.; with Mr. Henry Nicoll, of the Treasury, Secretary.

3. The Chancery Commission has been renewed, including an inquiry into the Ecclesiastical Courts. The Commissioners are,—the Master of the Rolls, Lord Justice Turner, Vice-Chancellor Kindersley, Sir John Dodson, the Right Hon. S. Lushington, Mr. Justice Crompton, the Right Hon. Sir James Graham, the Right Hon. Mr. Henley, Sir J. D. Harding, Vice-Chancellor Wood, Sir R. Bethell, Q. C. (Solicitor-General), Mr. Rolt, Q. C., and Mr. W. M. James, Barrister-at-Law; with Mr. Chapman Barber, Secretary.

4. The Commission on the Superior Courts of Common Law is also in full force. The second report on Common Law Procedure, published before the end of the Session, has already been acted upon, by the preparation of a bill for carrying it into effect next Session. The Commissioners are, the Chief Justice of the Common Pleas, Mr. Baron Martin, the Attorney-General, Master Walton, Mr. Bramwell, Q. C., and Mr. J. S. Willes, Barrister-at-Law; with Mr. H. T. Holland, Barrister-at-Law, Secretary.

5. The Real Property Commission, though not now in action, cannot be considered as defunct. They were Lord Langdale, Lord

Beaumont, Mr. Humphrey (afterwards one of the Masters in Chancery), Mr. Bellenden Ker, Mr. Coulson, Q. C., and Mr. Frere and Mr. Broderip, Solicitors. The Bills for the General Register of Deeds, and other real property schemes, were referred to a Select Committee of the House of Commons, whose report was unfavourable to the Government plan.

6. Then there is the Divorce Commission, consisting of Lord Campbell, Lord Beaumont, Lord Redesdale, Sir S. Lushington, Mr. Walpole, Vice-Chancellor Wood, and Mr. E. P. Bouverie, with Mr. Macqueen, the Secretary; and they have recently made their report, recommending very important alterations in the Law.

Besides these Government Commissions, there have been references to Select Committees of both Houses. Amongst these we may notice—

7. The Committee on the important subject of the Law of Partnership, who have already reported their views.

8. Next we have the *quasi* Commission or Board acting under the authority of the Lord Chancellor, for consolidating the Statute Law, consisting of Mr. Ballenden Ker, as the Chief, assisted by Mr. Anstey, Mr. Rogers, Mr. Coode, and Mr. Brickdale.

Thus a very numerous body of Judges and Barristers-at-Law, with several noble Lords, have been or are busily engaged on the investigation of all the great departments of our system of Jurisprudence, and ere long the Profession will see the result of their labours.

We have deemed it expedient to give this summary of the various commissions actually issued, and Committees appointed for the Amendment of the Law, in order that our readers may have ample time before the next Session to consider and discuss the several projects which, it may be expected, will come before Parliament at no distant period. Our columns (as heretofore, during now upwards of 20 years), are open to the communications of our brethren on all these subjects of Law Reform, more especially such as affect the welfare and interests of the larger branch of the Profession.

In another article we have adverted to the subject of the repeal of the remaining annual tax on attorneys and solicitors, and shall take an early opportunity of bringing before the Profession other topics of immediate importance to their clients and themselves.

THE DIVORCE COMMISSION.

PROPOSED ALTERATIONS IN THE LAW.

HAVING explained and elucidated the Law of Divorce as it at present exists in England, her Majesty's Commissioners refer in their report to the alterations which are deemed expedient. In relation to this branch of the subject, four points are considered:—1st, the cases for which divorce shall be granted; 2ndly, the grounds of defence which should operate as a bar; 3rdly, the terms upon which divorces should be granted, and the legal results that should follow; and, 4thly, the Courts and mode of procedure by which such questions should be tried and determined.

As already observed, the causes for which divorces *à mensa et thoro* are granted by the Ecclesiastical Courts are,—adultery and cruelty. The Commissioners are clearly of opinion that these causes ought still to be allowed. "Adultery," says the report "is plainly so gross a violation of the marriage contract, and so utter a destruction of all the objects for which the contract was made, that reason and religion alike proclaim, that the *innocent party* should no longer be constrained to live with the offender, when he in truth, by his own misconduct, has himself put an end to those engagements, which must always be considered in a Christian country, as mutual and reciprocal. Cruelty, as interpreted by the Ecclesiastical Judges, amounting in fact to a reasonable apprehension of danger to life, limb, or health, renders it impossible to discharge the duties of married life; and the duties of self-preservation must obviously take precedence of the duties of marriage, which are secondary, both in commencement and obligation."

Concurring in the strong terms of condemnation here applied to the offence of adultery, and agreeing that it operates as an utter destruction of the objects for which marriage was instituted, we shall hereafter have to inquire, whether the Commissioners have consistently carried out their own principles, in considering the nature and extent of the relief to be granted to "the innocent party," upon the violation of an engagement, which is admitted in terms so emphatic, to be "mutual and reciprocal."

The Commissioners consider the objections unanswerable to permitting separations for mutual dislike, incompatibility of temper, neglect, severity, and repeated provocation; but they are of opinion that wilful desertion should enable the wife "to

ask judicial relief, if not by a sentence of divorce *à mensa et thoro*, at least by an award of alimony for maintenance where the desertion has continued for a period to be limited by the Legislature." The conclusion to which the Commissioners arrive therefore is, that divorce *à mensa et thoro* should be allowed, as it now is, for adultery and cruelty, to the wife as well as the husband, and that desertion should entitle the wife to a remedy by way of alimony; but they are of opinion, that divorces *à vinculo* should not be extended beyond cases of adultery; and after having described adultery as an "utter destruction" of the marriage contract, which is "mutual and reciprocal," they recommend, that the relief by a divorce *à vinculo* should not be granted to the wife upon the ground of adultery, but only to the husband, and that, as a general rule, in cases of aggravated enormity, the remedy for the injured wife should be left, as at present, for the Legislature.

The grounds upon which the Commissioners have come to a conclusion so inconsistent and at variance with principle, are elaborately stated in the following paragraph, which, although it cannot be said to contain anything new in fact or argument, probably embodies all that can be said in support of the proposition, that the innocent wife may be justly deprived of the relief afforded to the husband when he is innocent and the wife delinquent:—

"Whether divorces *à vinculo* should be granted at the suit of the wife with the same facilities as at the suit of the husband, is a question (says the report) which has elicited much difference of opinion. There are four instances in which wives have succeeded in procuring divorces *à vinculo* from Parliament: but in these the husbands were guilty of other offences besides adultery, which were held either to preclude or absolve the complainants from further cohabitation. In two the adultery was incestuous. In the third there was profligacy, deceit, abandonment, and the grossest injury done to the woman which villany could inflict. In the fourth, there was bigamy. With these exceptions, there is no example of a divorce *à vinculo* being granted by Parliament at the suit of the woman. The applications which have been made on the ground of adultery, and that alone, have always failed. In Mrs. Teush's case, Lord Eldon observed, that he never recollected a more favourable representation given of any woman, but yet, on general grounds of public morality, he felt it his painful duty to give a negative to the original motion, that the Bill should be read a second time. In Mrs. Moffatt's case, however, he seems to have

changed his opinion, and moved the second reading of that lady's bill, saying that he saw no reason why a woman was not as much entitled to sue for divorce as a man. But in this opinion he was overruled by Lord Chancellor Brougham, who remarked, that it should be a case extraordinary in its enormity to entitle the female to such relief. He begged their Lordships would look at such a proceeding as this: every man who desired to get rid of his wife, has only to go and seek a mistress, and as the natural consequence of such conduct to desert his wife, and therefore he instantly drives her to an application to the House; a divorce is obtained, and his purpose is secured. He thought the best protection which could be imparted to the bonds of matrimony, was to abide by our ancient practice with respect to such cases. Parliament could afford the wife no remedy without at the same time setting the husband free from those shackles which it was his object to get rid of. We concur in the conclusion, for it is to be remembered, according to the just observation of Dr. Johnson, that the difference between the adultery of the husband and the adultery of the wife (socially speaking) is boundless. It is on this account that a divorce *à vinculo* has been allowed in one case and not in the other; and if it were allowed in both cases alike, we fear it would lead to all the evils of voluntary agreement for terminating the union. Such an opportunity, with the ill-disposed, would not be lost; should it be conceded, there is reason to apprehend that in many instances the husband would form a second connexion, in order to get rid of the first. According to the testimony of Chancellor Kent, it has produced that result in some of the States of America. In cases of incest, bigamy, or the like, it might be proper to give the wife the power to institute a suit for a divorce *à vinculo matrimonii*, but as a general rule, and in all other cases of aggravated enormity which may possibly arise but cannot be defined, we think that the remedy should be left for the Legislature, and for that alone."

As to the defences that should operate as a bar to a suit for divorce, the Commissioners consider that recrimination, connivance, and condonation should still, if established, be considered a legal answer, but apparently as if conscious that they had hardly done the "weaker vessel" justice when they recommend that the wife should not be entitled to the same complete relief as the husband, they suggest, that when the husband has been guilty of gross cruelty, and wilful desertion, he should not be entitled to a decree for separation or divorce, even when the wife fails in fidelity.

With regard to the terms upon which divorces should be granted, and the legal consequences resulting from them, it is not suggested that any alteration should be

¹ Art. 40, pages 15 and 16.

made in the law, as respects divorces *à mensa et thoro*, and as regards divorces *à vinculo*, whilst they assert as a general principle, that the future rights, interests, obligations, and liabilities, both of husband and wife, should cease altogether with the sentence for divorce, the Commissioners content themselves by suggesting, that the judicial tribunal to be created should be clothed with ample authority to secure such provision for the wife and children as may be just, and to decide as to the custody, guardianship, and education of the children.

The main improvement recommended by the Commissioners is, that instead of resorting to a Court of Law for damages, against the adulterer, an Ecclesiastical Court for a divorce *à mensa et thoro*, and the Imperial Parliament for a dissolving statute, a tribunal should be established, which might administer complete justice without having recourse to extraneous aid, subject nevertheless to an appeal in the event of a miscarriage. They recommend, that the evidence should be oral and taken in the manner prescribed by Stat. 15 & 16 Vict. c. 86, or in other words, according to the new practice in Chancery; and that the Judge should have the power of calling for the production of witnesses who might in his opinion throw light upon the cause, and also of examining the parties themselves. They propose to adhere to the rule, that confession *per se*, is not to be sufficient proof of conjugal infidelity; but when collateral circumstances are established, so as to lay a foundation for the reception of evidence by confession, it should be received in confirmation.

Assuming that the power of granting divorces *à vinculo* should not remain with Parliament, the Commissioners conceive, that there are well-founded objections to the transfer of this power to any of the existing tribunals, they consider that the entire dissolution of the marriage bond ought not to be left to the unaided decision of a single Judge, and recommend a new tribunal to be constituted, consisting of a Judge of the Court of Chancery, a Common Law Judge, and a Judge of the Ecclesiastical Court, that all questions of divorce should be referred to this tribunal, and that there should be no appeal except to the House of Lords.

Upon two questions of the highest importance, intimately connected with the subject of inquiry, the report indicates no opinion. Whether, in the case of a divorce *à*

vinculo, the guilty party should be prohibited from intermarrying with the partner of his or her guilt, as is now the law in Scotland, the Commissioners refrain from deciding; and they seem to have considered it beyond the scope of their inquiry to consider, whether the conflict of laws prevailing in the north and south of Great Britain—a conflict producing consequences disgraceful to civilization and a scandal to all law—might not, and should not, without further delay be got rid of? A reference to the list of decrees in the Scotch Courts proves incontrovertibly, that English persons, wholly unconnected with Scotland, have gone to Scotland for the purpose of being divorced, and by the opinion of the Scotch Courts at least, a divorce *à vinculo* of such persons, regularly pronounced in Scotland, is sufficient to dissolve an English marriage. As before noticed, by the Scotch Law, the party divorced by reason of adultery is prohibited from intermarrying with the person with whom he or she is declared by the sentence of divorce to have committed the crime. The parties thus interdicted from marrying in Scotland, may, and frequently have married in England, but if such an English marriage were to come into question before a Scotch Court, it would not be regarded as a valid marriage, and the issue of such marriage would not be legitimate, nor have the right of succession. Parties divorced in Scotland, therefore, may still be considered as married in England, and parties married in England would be regarded as unmarried persons in Scotland.

Surely, if the Law of Divorce is to be altered and placed upon a more rational footing, anomalies so startling should not be permitted to continue. It may also be hoped, that before the terms in which the Legislature interferes are definitively resolved upon, more consideration will be given to the inquiry, whether it is expedient to retain a proceeding so impotent and ineffective as divorce *à mensa et thoro*, and whether the interests of society imperatively require the violation of principle involved in the doctrine, that in cases of adultery, the same remedy should *not* be afforded to both husband and wife. Upon both these points the report now under consideration must be regarded as both unsatisfactory and inconclusive.

ATTORNEYS' ANNUAL CERTIFICATES.

REPEAL OF REMAINING TAX.

ALTHOUGH the Parliament will not meet for two or three months, it may be proper to resume, without delay, the consideration of the measures to be taken at the commencement of the Session, the more especially as some misunderstanding seems to prevail on the present state of the question.

It is supposed by persons, not sufficiently acquainted with the course of proceeding adopted by the Profession, that their claim stands now in a worse position than before the adverse decision of the House of Commons on the 20th July. This is a mistake. In the early part of the Session, the majority in the new Parliament was much larger than on any former occasion, and the Chancellor of the Exchequer having stated, that if the House abolished the Attorneys' Certificate Duty as well as the Advertisement Duty, there would be a *deficit* in the Treasury, the House preferred the total abolition of the remaining 6*d.* on advertisements, and accepted the offer of the remission of the Taxes on Attorneys to the amount of 50,000*l.* a year, which it was asserted the Government could alone spare. That sum, however, was apportioned differently from the mode required by the Profession (on which we shall have hereafter to observe); but, on the whole, it must be admitted, that the "instalment of justice" was not to be despised.

It is said that the Finance Minister should have been attended and conciliated, and a gradual reduction agreed upon. Now, the several Ministers have been respectfully memorialized and attended year by year, and no concession whatever could be obtained till the last Session, and on that occasion not the slightest intimation could be procured of any further reduction at a future time beyond the 25 per cent. then offered. By personal communication, and by urgent appeal in writing, it was sought to overcome the Chancellor of the Exchequer's decision, but he remained immovable.

The Council of the Incorporated Law Society then addressed the Attorneys and Solicitors practising throughout the three kingdoms, inquiring whether the proposed 25 per cent. should be accepted for the present, or an appeal made to the House of Commons for a total repeal, conformably to the previous majority of 52 in a House of 390 Members. In answer to this address, more than three-fourths of the Profession

urged the Incorporated Law Society to press for a *total* repeal, even at the hazard of a defeat; and the noble mover of the Bill, as well as its supporters generally, concurred in this view. The motion for the second reading could not be brought on till the 20th July, when the House gave the preference to the Repeal of the Advertisement Duty,—61 Members who were previously in favour of the Attorneys then voting against them.

Over and over again we have heard it urged, that after obtaining a majority in the early part of the several Sessions in which the measure has been before the House, it ought to have been immediately pressed forward through its various stages. It is all very well, after the fight is over, to say how much better it might have been conducted. Day by day, and week by week, we know that Lord Robert Grosvenor attended at his post to expedite the Bill, and it is well known that nothing is more difficult than the task of carrying forward a Bill in Parliament, opposed in all its stages by the whole force of Government. It would be of course a subject of infinite relief to the noble Lord, if he could successfully carry his object. He stands publicly pledged to the cause: he has never wavered in the conviction of its justice, and we may rest assured will not relax his efforts. Neither will the Council of the Incorporated Law Society, as the avowed Parliamentary Agents of the Bill, ever cease their exertions to relieve their brethren of this grievous burden. To the members individually of that Council, and to a large proportion of the Incorporated Law Society, the amount of the tax can well be borne without personal inconvenience; but they do not like to be robbed even of a small sum, nor to be classed with hawkers and pedlars, whilst all other professional men are exempt from this "black mail" and degrading badge.

With regard to the future steps to be taken, it appears that, in some quarters, our brethren are recommended to apply for a sliding scale of reduction at 1*l.* a year: so that the Country Attorneys would be relieved in *six* years, and the London in *nine*! This might be very well, if the burden on the Attorneys were like those of the rest of the community. If the Medical and Clerical Professions were equally taxed, and were to be thus slowly relieved,—if the Barristers and the Judges, and all other professional classes, stood on the same footing,—paying their respective proportions to the (now

reduced) sum of 90,000*l.* a year, — the Attorneys and Solicitors might no more complain than others; but whilst this burden, though reduced, rests wholly on their shoulders,—and they are less able to bear it than heretofore,—they naturally cry aloud against the injustice of an imposition so unequal and oppressive. We say, then, petition for the repeal of the whole of the remaining Tax. We think justice should be done, even if the Chancellor of the Exchequer be put to his wits to make both sides of his account equal. The Government is a debtor to the Profession. It paid 5*s.* in the pound last Session, and we believe it will be able to pay the rest in the next. At all events, we must see its balance sheet, look at what it gains from the Succession Duty and other sources; scrutinize its expenditure, and call upon it, as Sir A. Cockburn said (before he was Attorney-General), to be “just before it is generous,” that is, generous with other people’s money.

We shall soon have to submit to our readers some matters for consideration in reference to the reduction of the duty on Articles of Clerkship, and the proposed improvements in General and Legal Education.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

NEWSPAPER STAMP DUTIES.

16 & 17 VICT. c. 71.

‘This is “An Act to amend the Law relating to the Stamp Duties upon Newspapers.” [15th August, 1853.]

By the 6 & 7 Wm. 4, c. 76, and by the schedule to the Act, it is declared that the following papers (amongst others) shall be deemed and taken to be newspapers chargeable with the Duties by the said Act granted on newspapers; that is to say, “any Paper containing any public news, intelligence, or occurrences, or any remarks or observations thereon, printed in any part of the United Kingdom for sale, and published periodically, or in parts or numbers at intervals not exceeding 26 days between the publication of any two such papers, parts, or numbers, where any of the said papers, parts, or numbers respectively shall not exceed two sheets of the dimensions hereinafter specified (exclusive of any cover or blank leaf or any other leaf upon which any advertisement or other notice shall be printed), or shall be published for sale for a less sum than 6*d.*, exclusive of the Duty by the said Act imposed thereon; and it is provided, that no quantity of paper less than a quantity equal to 21 inches in length and 17 inches in breadth, in whatever way or form the same may be

made or may be divided into leaves, or in whatever way the same may be printed, shall, with reference to any such paper, part, or number as aforesaid, be deemed or taken to be a sheet of paper; and it is provided also, that any of the several papers hereinbefore described shall be liable to the Duties by the said Act imposed thereon, in whatever way or form the same may be printed or folded, or divided into leaves or stitched, and whether the same shall be folded, divided, or stitched, or not:”

And it being expedient to amend the said Act: it is therefore enacted, that from and after the passing of this Act so much of the aforesaid Act as is hereinbefore recited shall be and the same is hereby repealed.

Provided that no paper containing any public news, intelligence, or occurrences, shall be deemed to be a newspaper within the meaning of the said Act, or of any Act relating to the Stamp Duties on Newspapers, unless the same shall be published periodically, or in parts or numbers at intervals not exceeding 26 days between the publication of any two such parts or numbers.

ARTICLED CLERKS' QUERIES AND ANSWERS.

MODE OF SERVICE.

I HAVE been some years in the Law, but have yet about two years to serve of my articles. I have the agency of an insurance office offered me and also the secretaryship of a charity. Can I safely hold these appointments without any danger of not being admitted on the expiration of my articles, as the business would not at all interfere with my office duties?

B.

[We think that if the duties of the proposed appointment will not prevent the clerk from attending at the office of the attorney to whom he is articulated during the usual hours of business, nor interfere with the discharge of his professional duties, there can be no objection to his admission on the roll.—Ed.]

It is my intention to apply for the appointment of clerk to the Board of Health in the town where I am articulated. In case of my being appointed, would it interfere with my admission?

H.

[We think not; but the clerk will recollect that before he can obtain a fiat for his admission, he will have to make an affidavit that he has served the full term of five years under his articles—that is, in the proper business of an attorney.—Ed.]

I have a gentleman in my office under articles of clerkship, who is anxious to join the militia, having had a commission offered to him. It appears he will be obliged to serve

five years, and may be called out twice a year for 28 days' training each time, and may even be obliged to leave the town. How far will this jeopardise his service under articles?

T.

[We are of opinion that the clerk must serve so much time beyond the five years as will make up for his absence, unless such absence took place during the vacation, when it is usual to allow three or four weeks holidays.—Ed.]

Can a clerk, articled for the usual term of five years, and residing at Oxford, enter college in order to take his degree of B. A., the college duties in Term-time being over at 12 o'clock.

H.

[This would be a case for the discretion of the Judge, if the Examiners did not feel justified in entertaining it. If a clerk diligently attended from 10 till 4, at the attorney's office, we presume there could be no doubt of the sufficiency of the service; and if instead of those hours the attorney consented to an attendance from 12 till 6 (the same length of time), we "incline to think" the Act of Parliament would be effectually complied with.—Ed.]

In November, 1849, I was articled, and have remained in the same office until the present time. I now purpose to come to town to read with a conveyancer for six months, and to return here and to go to town again and read for a time with a special pleader, and afterwards enter the office of some London firm until the expiration of my articles. Will the above mode of service be sufficient?

B.

[There can be no doubt on this point. Any time not exceeding a year, may be served with a Barrister or Special Pleader, and a year with a London agent. We assume, of course, that the articles are for five years. The service of a graduate for three years must be continued with the attorney or his London agent. No part can be served with a barrister or special pleader.—Ed.]

REFORM IN BANKRUPTCY LAW.

MEETING AT GLASGOW.

A LARGE and influential meeting of Merchants and others of Glasgow has just been held, for the purpose of considering a proposed Bankruptcy Bill for Scotland. The views entertained by the community of Glasgow on the proposed measure are well entitled to consideration, and therefore we extract from the Glasgow Constitutional Newspaper so much of the report as our space will permit:—

Sir James Campbell, on taking the chair, said—"You are all aware that the meeting has been convened for the purpose of considering a Bill introduced by Lord Brougham, and now before Parliament, for the better regulation of our general Scottish insolvencies. This Bill aims at the concentration of all Laws, affecting, not only bankruptcy and cessio, but the working out of insolvencies in any form or shape. We have had long complaints of our Bankrupt Law in Scotland as not working well, either for the public, the creditors, or the debtor. Various alterations, and not a few new bills, have been introduced, to give us all we aim at, but, it would appear, still without accomplishing our objects. This Bill purports, in some measure, to assimilate the Law of Scotland to that of England; and while we are willing, and would court such a thing, at the same time we are not prepared to adopt the Law of England as it stands; and therefore it is that Lord Brougham, I believe, has undertaken to bring forward a Bill exclusively for Scotland, which should embrace all the improvements that either we can suggest, or have already suggested themselves to other parties. There is the provision of local management, originating and managing the whole system of carrying through measures connected with insolvency. This, I think, would be a very great boon to Scotland, more especially to Glasgow, where we have so much of that work. But one of the main features of this Bill, I think, is contained in a very few clauses—to effect the carrying through of private settlements. We are all aware that when either fraud, misfortune, or mismanagement overtakes a man in his business, and his affairs must come under the knowledge and management of his creditors, the sooner there is a settlement the better; and I am very happy to take credit to Scotland for this much, that I think nine-tenths of our bankruptcies, or insolvencies, originate in misfortune or mismanagement, and not in fraud. In these cases, generally speaking, we aim not at the punishment of the bankrupt, but are merely seeking as much as we possibly can out of his estate; and we frequently find our way to this without interfering much with the Courts at all, further than a mere record of our proceedings. The clauses to which I have alluded furnish us with this great facility which I appreciate so much."

Mr. Pringle next addressed the meeting.

Mr. Gilmour, formerly a Solicitor of the Scotch Courts, but now a member of the English Bar, followed. After referring to the various meetings he had addressed on the subject of the Bill, Mr. Gilmour said:—

"I have not yet heard one reason suggested, or objection made, against the principle of the Bill. It has been hailed in all the mercantile communities I have visited as a great boon. The privilege to the trading public provided by the Bill of enabling creditors to carry through private settlements with insolvent traders—the majority binding the minority, which will serve

all the purposes of a sequestration without the expense—has met with unusual and unequalled approbation. The provisions of the Bill for assimilating the procedure in applications for the benefit of *cessio bonorum*, and for rendering trustees in voluntary trusts amenable to the jurisdiction of the Sheriff, all proceed on the principle of local judicial control, and have likewise met with general approval. Not only has local judicial control been declared by mercantile men to be highly desirable, but it has been pronounced by the learned Sheriffs of Perth, Dundee, and Aberdeen, at public meetings recently held in those towns, and by the first lawyers in this city, to be eminently practicable and essential to the efficient administration of bankruptcy and insolvency. Whether the provisions of the Bill are calculated to work out this principle satisfactorily, it is for you to judge. The Bill has been extensively circulated amongst mercantile gentlemen for this purpose. Whether local judicial control may be best worked out with the aid of official assignees permanently attached to the Court, and by a trade assignee, or of an official assignee without a trade assignee, or with the aid of a trustee elected by the creditors, as at present, without either, are questions for you, gentlemen, to consider. It has been said that the system of judicial control provided by the Bill is too much an adoption of the English system. It is, however, essentially different from the English system of judicial control, and infinitely superior. The English system of local judicial control is of a limited and unsatisfactory character. The District Courts of Bankruptcy have power to award sequestration, but the suitors are constantly compelled to resort to the Courts of Common Law to try issues of fact, and to the Court of Chancery to try questions of property, by reason of want of jurisdiction in the Bankruptcy Courts. But this Bill gives jurisdiction to the Sheriff, not only to award sequestration, but to determine every question of what kind soever that can possibly arise under a sequestration. The promoters of the Bill south of the Tweed, who have been great sufferers by extortionate charges and abuses, which have crept into the English system, have guarded against those abuses and extortionate charges by means of most stringent provisions, which, by your assistance, they hope to make still more perfect.

“Mr. Pringle has asked my opinion as to the principle of remuneration to persons to be employed. Whether the officers necessary to be employed in winding up a bankrupt estate should be paid by *Fees* or by *Salaries*. A very general opinion prevails that the official assignees and every officer of Court should be paid by salary, and I think that a sound opinion. With regard to the payment of the *solicitor*, let the statutory fee be liberal—let it be what a gentleman of education ought to receive for his time and trouble; but let it be fixed. It has been suggested that there is no necessity for a separate solicitor to each sequestration, and that a salaried law adviser ought to be at-

tached to the Court, who should prepare the petitions and take charge of the procedure throughout, and of such legal points as arise in the sequestration. The appointment of a salaried Procurator Fiscal in the Sheriff Court has been instanced in support of the practicability of this proposal. I can see some practical difficulties in the way of carrying it out, but these might probably be overcome by calling in the occasional assistance of other members of the Profession. It is certainly a suggestion well worthy of consideration, for if practicable it would be a vast saving to creditors in sequestration. [2]

“It is proposed by the Bill to appoint a Judge for the county of Lanark, with exclusive jurisdiction, who shall devote his attention solely to bankruptcy and insolvency, in awarding sequestration; in adjudicating upon the claims of the creditors; in trying all questions of preference, granted or acquired, to the prejudice of the creditors; in hearing and determining all questions whatsoever, relating to the administration and distribution of the heritable and moveable estate of the bankrupt; in hearing and determining all matters relating to the allowance, suspension, or refusal of the bankrupt's discharge, and in punishing fraudulent bankrupts for offences against the Law of Bankruptcy. The effect of this provision of the Bill will be to take from the Court of Session the awarding of sequestration, and the setting aside of preferences; to relieve the trustee of adjudicating upon the claims of the creditors; to relieve the creditors of the judicial function of deciding upon the question whether the bankrupt shall be granted or refused his discharge, and to concentrate these separate jurisdictions and powers in the Bankruptcy Judge for the county of Lanark. It is provided by the Bill, that the proceedings before the Sheriff, under this consolidated jurisdiction, shall be conducted, so far as practicable, without written pleadings, or written arguments, and that all causes and questions shall be discussed *vivâ voce*, and disposed of on hearing the parties or their law agents. It is made indispensable by the Bill that the bankrupt be examined in public—that all creditors whose claims are disputed shall be examined in open Court—that the refusing or granting the bankrupt's discharge shall be discussed in public, and shall be a judicial sentence pronounced by the Judge, independent altogether of the bankrupt and the creditors. The Bill provides not only for liberation from imprisonment, but for discharge of the debtor from future liability for past debt. It is further proposed by the Bill that trustees, under voluntary trusts for the benefit of creditors, shall be amenable to the jurisdiction of the Bankrupt Judge, for the equitable distribution of the assets and the performance of their duties. The next important provision of the Bill is for the arrangement of insolvencies by private settlement. This branch of the Bill seems to meet with very general approbation throughout Scotland. In the opinion of many experienced lawyers and

merchants, it will supersede altogether, in a vast majority of insolvencies, the necessity of either applying for sequestration, or executing a trust deed. The Bill is a consolidation of the whole system of bankruptcy and insolvency. Its provisions have been framed upon extensive information furnished, and valuable suggestions made, by merchants in England and Scotland, trading throughout the United Kingdom and many other countries; and by lawyers and accountants, respectively engaged in the practice of bankruptcy in both countries. Each provision of the Bill has been carefully prepared and anxiously considered with reference to each other, in order to attain a consistent whole; and it is now submitted to the deliberate consideration of the merchants, manufacturers, and bankers of Glasgow."

[Resolutions in support of the Bill were unanimously passed.]

DECISIONS ON RECENT STATUTES.

ABSCONDING DEBTORS' ACT.—DEPOSIT IN LIEU OF BAIL.—SERVICE OF CAPIAS.

A PARTY was arrested in pursuance of a warrant under the 14 & 15 Vict. c. 52, but had been discharged out of custody upon making deposit, in lieu of bail, of the amount indorsed on the warrant, with the additional sum of 10*l.* for costs. Writs of summons and of capias were then issued in the action, the former having been duly served. The Court held, that it was unnecessary the writ of capias should be personally served on the defendant, observing (*per Parke, B.*), that nothing more was required beyond the issue of the capias, and that the meaning of the word "served," in section 6 of the Act, was merely that the writ should be served within the seven days from the date of the warrant where the party continued in custody on the same arrest in which he was originally taken, and did not make deposit. *Eld v. Vero*, 8 Exch. R. 655.

COUNTY COURT ACT, 1852.—TIME FOR PLAINTIFF TO APPLY FOR COSTS.

An action for the breach of a contract made at sea to tow the defendant's vessel into Liverpool, was tried in the Passage Court on Feb. 26, 1852, when the plaintiffs obtained a verdict for 2*l.* It appeared that the defendant was abroad at the time of the trial, and on his return, the plaintiffs, on 26th Jan., 1853, took out a summons for an order to tax their costs under the 15 & 16 Vict. c. 54, s. 4, which was dismissed by *Alderson, B.*, on Feb. 2, on the ground

of delay in making the application. On appeal, a rule was made absolute to rescind this order, and for the taxation of the plaintiffs' costs. *Raid and another v. Gardner*, 8 Exch. R. 651.

After issue joined in an action of assumpsit commenced in the Queen's Bench, the case was referred, and on June 9, 1852, an award was given for the plaintiff for less than 20*l.* The parties dwelt more than 20 miles apart. In Hil. Vacation, 1853, a summons was taken out to show cause why plaintiff should not have his costs, under Stat. 13 & 14 Vict. c. 61, s. 13: *Held*, not too late. *Morris v. Bosworth*, 2 E. & B. 213.

THE SUCCESSION DUTY.

EXCEPTION IN THE ACT.

MR. EDITOR,—My idea is, that the exception in section 1 of 16 & 17 Vict. c. 51, is introduced in the wrong place, and that by means of the copulative "and" it extends to the words "*all estates in any such hereditaments*," as well as to the words "*money secured on heritable property in Scotland*," to which alone it was, no doubt, intended to be confined.

However, as a Statute which gives or takes away the property of a subject, as this Statute undoubtedly does, ought to be construed strictly, according to Judge Holt in 12 Mod. 513, it is fair to raise any objection to the expressions used.

M. W.

COSTS OF TRUSTEE—SOLICITOR DEFENDING BY PARTNER.

A SOLICITOR was a defendant in an administration suit, which was brought by his co-trustee against him and the parties beneficially interested (several of whom were infants), and had conducted his defence by his partner. The Master, on the taxation of costs as between solicitor and client, had allowed the costs out of pocket only. An inquiry before the Master was sought, as to whether the employment of the partner had not been for the advantage of all parties.

The Vice-Chancellor *Parker* said, "It is the established rule (whether it be a good one or not, is not now the question), that a solicitor trustee, acting for himself as solicitor in the trust, can be allowed costs out of pocket only. An exception has been made in the case of two or more trustees, where one of them, being a

solicitor, acts for himself and his co-trustees in a suit;¹ but if ordinary costs were allowed in any case where a solicitor acts in a suit for himself alone, or what is the same in effect, acts for himself alone by his partner, it would be to destroy the rule altogether. I must decline to make the reference asked: to make it in this case would be a precedent, on which the Court would have to make it in every case.” *Lyon v. Baker*, 5 De Gex & S. 622.

FEEES FOR EXTRACTS FROM PARISH REGISTER OF BURIALS AND BAPTISMS.

A SOLICITOR had instructed his clerk to search the register book of burials and baptisms in the parish of St. Mary, Newington, and the clerk accordingly applied to the parish clerk for liberty to search them, but stating he he only required to make extracts, and not to have certificates. The parish clerk then stated the charge would be the same in either case,—viz., 3s. 6d., and charged 4l. 7s. 6d. for the 12 burials and 13 baptisms, extracted during a search through four years. On the same day, the solicitor wrote demanding re-payment of such fees, less the charge for the four years' search, and on its refusal, brought an action for money had and received to his use.

The observations of the Court, in reference to the payment of fees were as follow:—

Parke, B.—The clerk had a perfect right, at all events, to search, and during that time to make himself master, as he best could, of the contents of the books; and the defendant, in whose custody they were, could not, because the clerk wanted to make extracts, insist on his having certificates with the signature of the minister. For one shilling, he would be entitled to look at all the names in a particular year. He could have no right to remain an unreasonable time looking at the book, nor probably to require the parish clerk to put it in his hands, for it is the duty of the latter to superintend the search, and keep a control over the book. But if a person insists upon himself taking a copy, that is a different matter; the Statute only provides for a certificate with the name of the minister, and for that he must pay the additional fee. It was, therefore, an illegal act on the part of the defendant to insist that the plaintiff should pay 3s. 6d. for each entry of which he might choose to make an extract.

Platt, B.—Under the 6 & 7 Wm. 4, c. 86, s. 35, there are only two things in respect of which the incumbent is entitled to fees, namely, for a search and for a certified copy of the register. A fee of 1s. is allowed for a search throughout the whole period of the first year, and 1s. 6d. for every additional year. Those

are all the fees demandable in respect of a search. With regard to taking extracts, no fee is mentioned, and the incumbent has no right to tax any one for so doing. *Steele v. Williams*, 8 Exch. R. 625.

THE FUSION OF LAW AND EQUITY.

To the Editor of the Legal Observer.

SIR,—Quotations from old authors are entitled to respect, but they are neither to be taken as facts proved nor the perfection of human reason: as witness the quotations of your correspondent “*A Barrister*” (p. 434, ante),—“Equity, as distinguished from Law—positive mechanical Law—is a shallow conceit, the offspring of prejudice and ignorance.” This quotation should be read thus,—“The offspring of” Bentham’s “prejudice and ignorance” makes “Equity a shallow conceit, as distinguished from Law—positive mechanical Law.” Your correspondent, trying to put a common sense interpretation on this passage of Bentham, finds himself in a similar position with that author on “the GRAND rampart of chicanery”—although how long chaos has assumed the form of a rampart, Bentham and his disciples can doubtless best explain to the unenlightened lawyers.

Your correspondent then asks for an intelligible definition of Equity. Will he, or can he, explain the meaning of “the positive mechanical Law” of Bentham in the above-mentioned quotation? If he shall be so ingenious, his right to a definition of Equity will indeed be well earned, and he will, if I am not mistaken, obtain one. The sophistry of the North British reviewer is the sophistry of a grumbler, which is the worst of sophistry. “The division,” says he, “of Common Law and Equity, administered in different Courts, harmonizes neither with our ideal of a good system, nor with our practical instincts.” The only attempt to give this paragraph a correct appellation, as far as I am able, is,—that it is the base of “the baseless fabric of a vision.” The sophisms derived from it are exceedingly appropriate.

Your correspondent, as a grand climax of authority, gives the unanimous resolution of the Barebones Parliament—“that the Court of Chancery” (i. e., their Court of Chancery) “was a mystery of iniquity and a standing cheat.” Can we be surprised that one who deems such authorities as these of any weight should suggest that Parliament should take the case of *Jarndyce v. Jarndyce*, 1st Boz’s Reports, as a sufficient authority for a sweeping censure of those laws, which, whatever may be their defects, have raised this empire above every other in the world.

Allow me to give your correspondent a little advice,—he dubs himself “a Barrister”—he may be entitled to style himself so. For once in his life, let him act with that better part of valour—discretion, renounce his fusionist principles until he understands the difference between Law and Equity, and keep his name

¹ *Cradock v. Piper*, 1 M’N. & G. 664.

from all such absurd epistles as the one you have been kind enough to amuse your readers with. Your correspondent is probably a young man, if we may judge by the rashness of his indiscretion. I therefore bid him farewell with more of sorrow than of anger, and to

show him I do not desire "to feed contention in a lingering act," I will conclude with a quotation in reply—

"Hæ tibi erunt artes; pacisque imponere morem
Parcere subjectis, et debellare superbis."
NUMA.

ATTORNEYS TO BE ADMITTED.

On the last Day of Michaelmas Term, 1853.

Queen's Bench.

Persons who have given Notice of Admission pursuant to the Rule of Court of Hilary Term, 1853

Clerks' Names and Addresses.

To whom Articled, Assigned, &c.

Ashton, John, 40, Great Marlborough Street; Ranelagh Grove; Great Russell Street; and Seisdon	H. J. Barker, Wem; C. G. Jones, Gray's Inn Square
Bathurst, Henry, 26, Devonshire St., Queen's Square; and Faversham	R. Bathurst, Faversham
Bishop, Mortimer Samuel, 6, North Place, Gray's Inn Road; Torrington Square; and Exeter	W. R. Bishop, Exeter
Calthorp, Thomas Dounie, 4, Upper Park Place, Blackheath Park	J. T. Rymer, Whitehall Place
Carr, Edward Statter, 32, Gloucester Place, Hyde Park; and Leamington Priors	J. Newbold, deceased, Bedford Row
Fewster, John Reed, 10, Gordon Street, Is- lington; Alfred Street; and Durham	R. J. Shafto, Durham
Fox, Henry Atherton, 26, Michael's Place, Brompton; and Manchester	A. S. Field, Leamington; H. Bury, Manches- ter; J. Bury, ditto
Harris, Edmund, 27, Lamb's Conduit Street; Hunter Street; and Rugby	G. Harris, Rugby
Holt, Charles, jun., 250, High Holborn; Hol- born Hill; and Coventry	J. Holt, Coventry
Jennins, Charles, 26, Bryanston Street	P. H. Watts, Bath
Keene, John Baptiste, 37, London St., Fitz- roy Square	W. Tatham, Throgmorton Street
Lavender, George Henry, 15, Argyle Square; Queen's Square; and Biddenham	A. Sharman, deceased, Bedford; J. W. Turn- ley, ditto
Minor, William, Oxford Street; and Store Street, Bedford Square	J. Lane, Chancery Lane
Nash, Alfred Dormier, 14, Great Coram St., Russell Square	J. I. Wathan, Bedford Square; H. Crocker, Chancery Lane; A. Mayhew, Carey Street
Owen, Sackville Herbert, 19, George St., Eus- ton Sq.; Shafteshury Cres.; and Narberth	W. H. Owen, Narberth
Palmer, Gillies Charles, Grantham	W. Ostler, Grantham
Parker, Henry Watson, 84, Westbourne Park Villas	R. Few, Henrietta Street
Pedley, Joshua, jun., 10, Billiter Square; and Forest Gate, Westham	J. Druce, Billiter Square
Rudge, Edmund, jun., Baker St.; Chepstow Pl.; Lower Calthorp St.; and Tewkesbury	J. Thomas, Tewkesbury
Smith Alfred, 5, Featherstone Buildings, Hol- born; and Manchester	G. Smith, Manchester
Stone, George William, 4, Albany Terrace, Camberwell	G. Tamplin, Fenchurch Chambers
Umbers, William Crowther, Warwick House, Cheltenham	J. Umbers, Cheltenham
Vaughan, James, Huntingdon	W. Fowler, Huntingdon
Wright, John Joseph, 2, Henrietta Street, Brunswick Square, Sunderland	J. J. Wright, Sunderland.

Michaelmas Term, 1853.

TO BE ADDED TO THE LIST PURSUANT TO JUDGE'S ORDERS.

Clerks' Names and Addresses.

To whom Articled, Assigned, &c.

Bellas, Thomas, 12, Compton Street East, Brunswick Square; and Woodbridge	J. Coverdale, Bedford Row
Brown, Lancelot Charles, 4, Halkin Street, Belgrave Square	J. Leman, Lincoln's Inn Fields
Coates, John, Wesbury-on-Trym	C. Savery, Bristol
Evans, Edward, 7, King's Bench Walk	F. Boydell, Chester
Haire, John Kell, Kingston-upon-Hull	C. S. Todd, Kingston-upon-Hull
Hellings, Robert Wintle, 50, Great Coram St., Russell Square; Albert Street; and Bath	R. H. Hellings, Bath
Johnston, Patrick, 45, Great Russell Street	W. S. Cookson, New Square
Markby, Alfred, 6, Albert Place, Kennington	T. Borrett, Whitehall Place
Morley, Ebenezer Cobb, Kingston	C. H. Phillips, Kingston
Newman, Edwin, jun., 28, John St., Bedford Row; Serjeant's Inn; and Yeovil	E. Newman, Yeovil; H. S. Westmacott, John Street
Withers, James Tuck, 70, Tachbrook Street, Westminster	H. W. Ravenscroft, Gray's Inn Square; W. Craven, Bristol.

TAKING OUT AND RENEWAL OF CERTIFICATES.

Queen's Bench.

Last day of Michaelmas Term, 1853.

Ainger, Arthur Robert, 26, Bedford Place; and Congleton.

Beatniffe, Robert Gray, Great Grimsby.

Collins, Nathaniel Kerle, Ross.

Hinde, John, 52, Skinner Street, London.

Kelly, Francis Coham, 8, Houghton Place, Amphill Square.

Twiss, Richard, 37, Hamilton Terrace, St. John's Wood.

Wilson, Thomas, 7, Maida Hill West; and Warwick Crescent.

NOTES OF THE WEEK.

REMOVAL OF THE COURTS.—SITTINGS IN LINCOLN'S INN.

AFTER the ancient ceremonies of receiving the Judges and Leaders of the Bar at breakfast on the first day of Term, opening the Courts in Westminster Hall, and sitting on that day,—the Lord Chancellor, the Lords Justices, and the Vice-Chancellors, adjourned to Lincoln's Inn, and the Master of the Rolls to his own Court in Chancery Lane. During the present Term, the Sittings after, and in Hilary Term,—Parliament not being sitting,—the Equity Courts will, no doubt, continue in their present convenient locality. But we must not lose sight of the necessity of removing the whole of the Courts permanently to the proposed new building between the Strand and Carey Street,—thus uniting the two Temples with Lincoln's Inn. The clamour about Temple Bar should be postponed, and when the new Courts are erected, and the Strand and Fleet Street widened from St. Clement's to St. Dunstan's Churches, a magnificent Arch may be constructed on the site of the old Bar, and a footway formed over it from the Courts to the

Temple. This would truly be a great public improvement. The mere removal of the present Bar would be at best a small affair.

CLERK OF ENROLMENTS IN CHANCERY.

We have to express our regret at the death of Mr. David Drew, who for many years ably and carefully discharged the duties of the Office of Chancery Enrolments. The Master of the Rolls to whom the patronage belongs, has just appointed Mr. William Wright, of the Chancery Bar, to fill the vacancy. This selection is, we believe, very satisfactory to the Profession.

It will be recollected that Mr. Wright commenced his career as a solicitor, and attained considerable eminence. He was afterwards called to the Bar, and Messrs. Clowes, Orme, and Wedlake succeeded to his practice as a solicitor. We need not add that, with his large experience, and habits of business, Mr. Wright is well qualified for the office.

ARTICLED CLERKS' EXAMINATION AND CORRESPONDING SOCIETIES.

A meeting is about to take place of the Articled Clerks from various parts of the country, to consider of the establishment of a Society for the Annual Voluntary Examination of Clerks during their clerkship, by way of preparation for the General Examination which they will undergo before admission; and to institute prizes for those who pass the best in voluntary examination. The Council of the Incorporated Law Society have been requested to allow the meeting to take place in one of their rooms (ordinarily used for arbitrations), and they have granted permission for this purpose for the 6th and 7th inst. at 6 o'clock.

Another Society has been projected at Norwich, to be called the Articled Clerks' Corresponding Society, for the purpose of encouraging the members to write legal Essays, to be transmitted to each other, and when approved to be published.

EXTENSION OF TIME FOR FILING SPECIFICATIONS.

The Lord Chancellor has intimated, that in applications for extension of the time for filing specifications, &c., under the Patent Law Amendment Act, 1852 (15 & 16 Vict. c. 83), indulgence will only be granted where there has been no neglect or default on the part of the applicant or of his agent.

Patent agents ought to be practising attorneys or solicitors.

NEW QUEEN'S COUNSEL.

Stephen Temple, Esq., of the Northern Circuit, called by the Inner Temple, 28th Jan., 1831.

Edward James, Esq., Judge of the Liverpool Passage Court, called by the Society of Lincoln's Inn, 16th June, 1835.

Montague Smith, Esq., of the Western Circuit, called by the Society of Gray's Inn, 18th Nov., 1835.

William Robert Grove, Esq., of the South Wales Circuit, called by the Society of Lincoln's Inn, 23rd Nov., 1835.

**RECENT DECISIONS IN THE SUPERIOR COURTS,
AND SHORT NOTES OF CASES.**

Lord Chancellor.

In re Campbell's Patent. Nov. 2, 1853.

PATENT.—SEALING, NOTICE OF.—SERVICE ON SOLICITOR.

Leave granted to serve notice of petition for sealing patent on solicitor, where the party entering the caveat was a foreigner and out of the jurisdiction.

This was an application for leave to serve notice of sealing the patent in this case on the solicitor of the party who had entered the caveat, on the ground he was a foreigner and out of the jurisdiction.

Drewry in support.

The Lord Chancellor granted the application.

Lords Justices.

Anon. Nov. 3, 1853.

APPEAL FROM DECREE ON MOTION.—SETTING DOWN.

Appeals from decrees made under the 15 & 16 Vict. c. 86, s. 15, on motion for decree, must be placed in the general paper of appeals, and will not be considered as appeal motions.

On this appeal from a decree made under the 15 & 16 Vict. c. 86, s. 15, on motion for a decree, being called on,

The Lords Justices said, that in future such appeals would not be considered as appeal motions, but be placed in the general paper of appeals.

Trustees of the Birkenhead Docks v. Laird and others. Nov. 3, 1853.

EQUITY JURISDICTION IMPROVEMENT ACT.—DETERMINATION OF QUESTION OF LAW.

Quære, whether this Court has jurisdiction under the 15 & 16 Vict. c. 86, s. 61, to determine a question of law which is not required to the decision of the equity in the case, but for the purpose of a declaratory decree.

On this appeal from the Master of the Rolls, a question arose whether this Court had juris-

diction under the 15 & 16 Vict. c. 86, s. 61, to determine a question of law, which was not required to the decision of the equity in the case, but for the purpose of a declaratory decree.

Follett and Goldsmid for the plaintiffs; *Solicitor-General and Kinglake* for the defendants.

The Lords Justices said, there was considerable doubt on the point, and an arrangement was entered into, to avoid the difficulty suggested.

Master of the Rolls.

Joddrell v. Joddrell. Nov. 2, 1853.

ARBITRATION.—POWER TO UMPIRE TO EXAMINE ON OATH.

Where the original order of reference to the trustees of the marriage settlement of the differences between a husband and wife, provided for the appointment of an umpire in the event of their not agreeing, but granted no power to such umpire to examine witnesses on oath, the Court refused to grant such power to an umpire who had been subsequently appointed.

Rouppell appeared in support of this application for power to be given to examine witnesses on oath to the umpire, who had been appointed on the non-agreement of the trustees of a marriage settlement, to whom certain differences between a husband and wife had been referred.

Roll, *contrà*, was not called on.

The Master of the Rolls said, that as the original order of reference gave no such power in the event of the appointment of an umpire, the application must be refused.

Hughes v. Hughes. Nov. 2, 1853.

SPECIAL CLAIM FOR PARTITION OF REAL ESTATE.—LEAVE TO FILE.—COMMISSION.

Leave granted to file a special claim for the partition of real estate between two gavelkind heirs.

Quære, whether the commission of partition can be made on claim, or whether a bill is required?

THIS was a motion for leave to file a special claim for the partition of real estate between two gavelkind heirs.

S. F. Bilton, in support, asked whether the commission of partition could issue on the claim, or whether it was necessary to proceed by bill.

The Master of the Rolls said, that leave might be taken to file the claim, but refused to decide on the other question.

Vice-Chancellor Kindersley.

Rogers v. Hooper. Nov. 2, 1853.

AMENDMENT OF BILL.—DECISION OF CHIEF CLERK.—WANT OF PROSECUTION.—SUIT IN FORMA PAUPERIS.

Held, that the decision of the Chief Clerk during Vacation, in reference to amendments in a bill, should be brought before the Vacation Judge, if objected to, or, at all events, before the Court on the first day of Term. But in a pauper cause, an application to dismiss for want of proceeding to amend pursuant to leave, was directed to stand over until the next seal, where the delay was stated to be occasioned by the searching for and arrangement of documentary evidence.

Boyle appeared in support of this application to dismiss the bill of the plaintiff, who sued in *forma pauperis*, for want of prosecution in not proceeding to amend the bill pursuant to leave obtained.

Green, contra, on the ground the delay was occasioned by the time occupied in searching for and arranging the documentary evidence, and that the question of the amendments had been before the Chief Clerk to the Vacation Judge, and it was proposed to bring his decision before the Court.

The Vice-Chancellor said, the Chief Clerk's decision should have been brought before the Vacation Judge, or, at all events, on the first day of the Term; but, under the circumstances, the matter might be postponed to the next seal day, when a peremptory order would be made, if required.

Vice-Chancellor Stuart.

Pleaton v. Johnston. Nov. 2, 1853.

SECURITY FOR COSTS.—BOND FROM GUARANTEE ASSOCIATION.

Held, that a bond from the British Guarantee Association given to the Clerk of Records and Writs, is a sufficient security for costs, although the order required that of some sufficient person.

THIS was an application for a reference to Chambers, as to the sufficiency of a bond from the British Guarantee Association, which had been given by the plaintiff on being ordered to find security for costs by the bond of some sufficient person.

Jessel in support: Chandless and Hoare for the plaintiff.

Vice-Chancellor held, that the bond was sufficient, and refused the application.

Shaw v. Thackray and another. Nov. 3, 1853.

AGREEMENT FOR SALE OF PROPERTY.—SPECIFIC PERFORMANCE.—INCAPACITY TO CONTRACT.—ADEQUACY OF PRICE.

The defendant contracted to sell the equity of redemption in certain property to the plaintiff, but afterwards assigned the same to M. for an advanced price. The sum contracted by the plaintiff was reasonable, and it appeared that the defence set up of the defendant's incapacity by reason of intoxication was not sustained, and M. was aware of the previous agreement with the plaintiff. A decree for specific performance was made against the defendant and M., with costs.

Makins and H. Stevens appeared for the specific performance of a contract entered into by the defendant, Thackray, to sell the equity of redemption of a public-house at Sheffield to the plaintiff for 735*l*. It appeared that in the first instance the contract was a verbal one, and that the next day the memorandum of agreement was executed, providing for the completion by a day named, and for the deposit of 15*l*., which was done. The defendant afterwards assigned the property to the defendant, Moore, for 760*l*.

Russell, Speed, and Villiers for the defendants.

The Vice-Chancellor said, there was nothing to show the price paid by the plaintiff was unreasonable, or that the defendant was incapable to enter into the agreement in question by reason of being intoxicated, and the defendant, Moore, procured the assignment with full notice of the agreement with the plaintiff. There must be a decree as asked, with costs.

Court of Queen's Bench.

Stamp v. York, Newcastle, and Berwick Railway Company. Nov. 2, 1853.

RAILWAY COMPANY.—WHAT ARE NECESSARY AND SUFFICIENT GATES.

A railway company were required by their act to provide necessary and sufficient gates on the sides of their railway, and it appeared that in consequence of a gate which did not close of itself, being left open, two of the plaintiff's horses escaped on the line and were killed. The Court refused to grant a rule nisi to set aside the verdict for the plaintiff, on the question of sufficiency of the gate.

THIS was a motion for a rule nisi to set aside the verdict for the plaintiff, and for a new trial, in this action, which was brought to recover damages for the death of two of the plaintiff's horses through their neglect. It appeared on the trial, before Wightman, J., at the last Northumberland Assizes, that the defendants' act required them to construct necessary and sufficient gates on the sides of their railway,

and that the horses had strayed on the line and been killed in consequence of a gate not being constructed so as to close of itself and having been left open.

Knowles, Q. C., in support.

The Court said, the Judge had properly left it to the jury to say whether the gate erected was sufficient, and they had decided that it was not, and the rule must be refused.

Regina v. Eggington. Nov. 2, 1853.

MUNICIPAL CORPORATIONS' ACT.—OFFENCE BY TOWN CLERK.—COMMITMENT.—ARREST ON SUNDAY.

Held, that a warrant for the arrest as an offender, under the 6 & 7 Wm. 4, c. 76, of the town clerk, for not delivering up on his removal from office his books and papers, and for not rendering accounts of moneys received, cannot be executed on a Sunday, inasmuch as it is of a civil and not a criminal nature; and also, that his detention under a second warrant, while in custody under the first, was void; and order for his discharge on habeas corpus.

This was an application for the discharge of the defendant, who had been brought up on habeas corpus, out of custody. It appeared that he had been arrested as an offender under the 6 & 7 Wm. 4, c. 76, for not having delivered up his books and papers, and rendered accounts as town clerk, on his removal from office.

Gray in support, on an affidavit the arrest took place on a Sunday, and urged that it was void under the 29 Car. 2, c. 7, s. 6,¹ and that the detainer upon a second warrant which had been issued was irregular.

Pashley and Cole, contra.

The Court said, the defendant was committed for not performing a duty, but for no offence that was indictable within the exception of the Stat. Car. 2, and could not therefore be arrested on a Sunday; and he could not be taken under the second warrant while in custody under the first, and he was accordingly discharged.

Sturges v. Joy. Nov. 3, 1853.

INSOLVENT DEBTOR.—ENTRY OF SATISFACTION ON JUDGMENT UNDER WARRANT OF ATTORNEY.—JURISDICTION.

Held, that this Court has no jurisdiction under the 1 & 2 Vict. c. 110, s. 92, to direct satisfaction to be entered on a judgment under a warrant of attorney, on payment of the debts in respect of which it had been given, but that such power is confined to the Insolvent Debtors' Court.

This was a rule nisi on the provisional as-

¹ Which provides, that, "except in cases of treason, felony, or breach of the peace," service of process cannot be made on a Sunday, and if made it is void.

signed of an insolvent, for satisfaction to be entered on a judgment under a warrant of attorney, on payment of the debts in respect of which it had been given.

By sect. 87 of the 1 & 2 Vict. c. 110, it is enacted, that before adjudication, the prisoner shall execute a warrant of attorney to confess judgment for the amount of debts in the schedule; and by sect. 92, that if "it shall appear to the satisfaction of the said Court of Insolvent Debtors that all the debts in respect of which such adjudication was made have been discharged and satisfied, it shall be lawful for such Court" "to order satisfaction to be entered on such judgment."

Sir F. Thesiger and *Addison* showed cause, on the ground of want of jurisdiction.

Channell, S. L., and *Bovill*, in support.

The Court said, the intention of the Act was to confine this jurisdiction to the Insolvent Debtors' Court, and that this Court could not interfere, and the rule was therefore discharged with costs.

Lipson v. Harrison. Nov. 3, 1853.

ACTION FOR SALVAGE OF VESSEL.—JURISDICTION.

Held, that an action cannot be maintained for salvage from the owners of a vessel which had stranded, on behalf of a sailor, but must be brought in the Admiralty Court.

This was a motion for a rule nisi to set aside the nonsuit and for a new trial in this action, which was brought by a sailor on board the *Swiftsure* to recover salvage from the owners of the *Lady Worsley*, which had stranded on the coast of Africa. On the trial before *Wightman, J.*, a nonsuit had been directed.

Atherton, Q. C., in support.

The Court said, there was no contract either express or implied, but, if any, it was between the masters of the vessels. But the claim should have been made in the Court of Admiralty, and the rule must be refused.

Court of Exchequer.

Emery v. Webster. Nov. 3, 1853.

TAKING OUT OF COURT OF MONEY PAID IN UNDER PARTICULARS FRAMED IN ERROR.—JUDGE'S ORDER, APPEAL FROM.—COSTS.

The sum of money paid into Court in pursuance of particulars claiming only such amount, under a misconception, had been taken out of Court and the costs taxed and paid. It was then discovered that the pleadings would be a bar to further relief to which the plaintiff was entitled, and a Judge's order was obtained for leave to repay such sum and costs to the defendant. A rule nisi to rescind the Judge's order was discharged with costs.

This was an action to recover for the plain-

tiff's dismissal from the defendant's theatre, where he was engaged for three years under an agreement. It appeared that the particulars claimed for four weeks' salary only, under a misconception, and, on that amount being paid into Court, it had been taken out and costs taxed and paid. It was afterwards found that the pleadings covered any claim for damages in respect of future salary, and a summons had been taken out for the plaintiff to be at liberty to repay the 32*l.* with costs, and an order having been made by *Parke, B.*, this rule had been obtained to set it aside.

Hawkins showed cause; *Bramwell* and *Wordsworth* in support.

The Court said, the taking out of the money appeared to have been done under a misconception as to the effect of the existing pleadings and the plaintiff's rights, and he was entitled to come in and set himself right on payment of all the costs. The rule would therefore be discharged, and, as it was an appeal from the Judge, with costs.

ANALYTICAL DIGEST OF CASES, SELECTED AND CLASSIFIED IN ALL THE COURTS.

Courts of Common Law.

COUNTY COURT CASES.

ABANDONMENT OF EXCESS OVER 20*l.*

1. *Evidence of.*—The levying in the County Court of a plaintiff for a sum less than 20*l.*, part of a larger demand exceeding that amount, is not, *per se*, an abandonment of the excess.

In order to constitute such an abandonment, the plaintiff must do some act in Court, at the trial, indicating his intention to abandon the excess, *semble*.

The plaintiff, in January, sold goods to the defendant for 17*l.*, for which he sent in his bill. In the following month he sold him another quantity of similar goods for 21*l.* 10*s.*, and sent in his bill for 38*l.* 10*s.* the amount of both purchases. The plaintiff afterwards levied a plaintiff in the County Court for the 17*l.* He did not appear at the trial, but the defendant attended and admitted the debt, for which judgment was accordingly given. To an action for the 21*l.* 10*s.*, the defendant pleaded the proceedings in the County Court, averring that the plaintiff had thereby abandoned the excess of his debt above the amount recovered there: *Held*, that such proceedings were not evidence of an abandonment. *Vines v. Arnold*, 7 D. & L. 277.

2. *Practice.*—A plaintiff, having a claim exceeding 50*l.*, sued in a County Court for 50*l.* At the trial an entry was made on the particulars and judgment, that he abandoned the excess over 50*l.*

Held, that the Court had jurisdiction under 9 & 10 Vict. c. 95, s. 63.

The proper course, however, in such a case, is to enter the abandonment on the summons before service. *Isaacs v. Wyld*, 2 L. M. & P. 676.

Cases cited in the judgment: *Vines v. Arnold*, 8 C. B. 632; *Brunskill v. Powell*, 1 L. M. & P. 550.

And see *Claim above 50*l.*; Jurisdiction*, 14.

APPEAL.

Observations of Judge.—Whether an appeal lies from the County Courts where the plaintiff has not been tried by a jury, *quære*. Per *Maule, J.*

The observations made by the Judge of the County Court in delivering judgment, do not legitimately form part of the case upon appeal; and cannot be referred to either as finding a fact, or as giving a reason for the judgment. *East Anglian Railway Company v. Lymington*, 2 L. M. & P. 221.

APPEAL COSTS.

1. In an appeal from the County Court, as a general rule, the successful party is entitled to costs. *Robinson v. Lawrence*, 7 Exch. R. 123; *Hunt v. Wray*, *ib.* 125.

2. *Refusal to nonsuit.*—Where the plaintiff, before verdict, applied to be nonsuited, which the Judge refused, but stated that he would give the plaintiff leave to move to set aside the verdict and to enter a nonsuit, and the plaintiff, without moving in pursuance of such leave applied against the decision, the Court allowed the plaintiff the costs of the appeal. *Outhwaite v. Hudson*, 7 Exch. R. 380.

3. As a general rule, the successful party in an appeal is entitled to costs. *Outhwaite v. Hudson*, 7 Exch. R. 380.

4. The Court will always order the unsuccessful party to pay the costs of an appeal from a County Court. *Robinson v. Lawrence*, 2 L. M. & P. 673.

CERTIFICATE FOR COSTS.

1. *Semble*, that a Judge may grant a certificate to entitle the plaintiff to costs under the 129th sect of the 9 & 10 Vict. c. 95, at any time before the taxation of costs. *Tharratt v. Trevor*, 6 Exch. R. 187.

2. Under the 12th section of the County Courts Extension Act, 13 & 14 Vict. c. 61, a Judge has power to certify for costs, where the sum recovered in actions of contract is 20*l.*, and in tort 5*l.* *Garby v. Harris*, 7 Exch. R. 591.

CERTIORARI.

1. *Return of.*—*Held*, that a certiorari, under the 121st section of 9 & 10 Vict. c. 95, ought to be made returnable so as to allow sufficient time for the preliminary inquiries which the section directs. *Mungean v. Wheatley*, 6 Exch. R. 88.

2. *Removal of plaintiff.*—*Semble*, the power given by the 9 & 10 Vict. c. 95, s. 90, to remove a plaintiff by certiorari from a County Court, is not taken away by the 13 & 14 Vict. c. 61, s. 16. *Parker v. Bristol and Exeter Railway Company*, 6 Exch. R. 184; 2 L. M. & P. 136.

3. *Removal of plaintiff.*—*Affidavit, insufficient.*—*Costs.*—Where a certiorari had issued by leave of a Judge under 9 & 10 Vict. c. 95, s. 90, to remove a plaintiff from a County Court, upon an affidavit which did not disclose certain facts which might have induced the Judge to impose terms, as to costs, upon the party applying, the Court quashed the writ. *Parker v. Bristol and Exeter Railway Company*, 2 L. M. & P. 136.

4. *Amount of security.*—*Judge's duty.*—It is the duty of the Judge of the County Court, where the declaration required by section 121 is made, to fix the amount of security, before requiring the execution of the bond. *Mungean v. Wheatley*, 2 L. M. & P. 155.

5. *For removal of Plaintiff.*—*Attachment.*—The delivery of a writ of certiorari to a person acting as clerk in the public office of the County Court is a sufficient delivery to the Judge.

But service is not sufficient for the purpose of an attachment against the judge for disobedience.

Where the writ has not been delivered to the Judge personally, he should, *semble*, be ruled to return it, before proceedings are taken by way of attachment against him. *Brookman v. Wenham*, 2 L. M. & P. 233.

And see *Jurisdiction*, 13.

CLAIM ABOVE 50L.

Abandonment of excess.—*When to be made.*—Where a plaintiff, having a cause of action to an amount exceeding 50l., issues a plaintiff in a County Court for that amount only, it is not necessary, in order to give the Court jurisdiction, that entry of the abandonment of the excess should appear on the plaint or summons; but it is sufficient if such entry be made at the hearing of the cause. *Isaac v. Wyld*, 7 Exch. R. 163.

Cases cited in the judgment: *Grimby v. Aykroyd*, 3 Exch. R. 470; *Vines v. Arnold*, 8 C. B. 632; *Bramhall v. Powell*, 19 Law J., N. S., Exch. 362.

And see *Abandonment of Excess over 50l.*

CONCURRENT JURISDICTION.

1. *Costs.*—The plaintiff and defendant, who dwelt less than 20 miles apart, entered into a written agreement, by which the former engaged to supply the latter with goods of a certain quality and at a specified price. After the delivery of a portion of the goods, the defendant refused to take the remainder, on the ground that they were not of the quality agreed upon. The plaintiff thereupon sued the defendant in one of the Superior Courts, to recover the amount of the goods so delivered; and, at the trial, he gave in evidence the written agreement, and recovered a verdict for the amount of the

goods supplied, at the price stated in the agreement. This agreement was executed by both parties, at a place within the jurisdiction of a Court within which the defendant dwelt at the time of action brought, and the amount recovered was below 20l.: *Held*, that this was not a case in which the Superior Court had concurrent jurisdiction; and therefore, that the plaintiff was not entitled to costs. *Norman v. Marchant*, 7 Exch. R. 723.

2. *Dwelling.*—*Semble*, that if a plaintiff does dwell, within the 9 & 10 Vict. c. 95, s. 128, in two places, one of which is more than 20 miles from the dwelling of the defendant, the Superior Courts have concurrent jurisdiction under the 128th sect., as it could not have been suggested on the roll that the plaintiff did not dwell more than 20 miles from the defendant. *M'Dougal v. Paterson*, 2 L. M. & P. 681.

3. *Costs, order for.*—*Application against Judge's order.*—In a case where the Court of Queen's Bench had concurrent jurisdiction with the County Court by Stat. 9 & 10 Vict. c. 95, s. 128, the plaintiff recovered only 40s. damages. This sum he accepted from the defendant without prejudice to any claim for costs; and he summoned the defendant to show cause before a Judge at Chambers, why the costs should not be taxed, and paid by defendant to plaintiff. The Judge, considering that a discretion on this point was vested in him by Stat. 13 & 14 Vict. c. 61, s. 13, refused to make an order. In the next Term but one after this decision, the plaintiff moved the Court of Queen's Bench that the costs might be taxed, and paid to him by the defendant; relying on a decision of the Court of Common Pleas, since the hearing at Chambers, that the Judge, under s. 13, was bound to grant costs. *Held*, that the application was too late.

Quere, whether the enactment in Stat. 13 & 14 Vict. c. 61, s. 13, that the Judge, in the cases there mentioned, "may" order costs, be imperative, or only permissive. *Orchard v. Mossy*, 2 E. & B. 206.¹

And see *Costs; Jurisdiction*, 3.

COSTS.

1. *Application for, under County Courts Extension Act, need not be by affidavit.*—An application to a Judge at Chambers by a plaintiff for costs, under the County Courts Extension Act, 13 & 14 Vict. c. 61, s. 13, need not be supported by affidavit, unless the facts are controverted by the defendant. *Power v. Jones*, 6 Exch. R. 121.

2. *Concurrent jurisdiction.*—The 13th sect. of the 13 & 14 Vict. c. 61, by which the Court, or a Judge at Chambers, are empowered to make an order that the plaintiff shall have his costs, is discretionary and not compulsory. *Jones v. Harrison*, 6 Exch. R. 328.

3. *Discretion of Judge.*—The power of a Judge to grant costs under section 13 of the 13 & 14 Vict. c. 61, is discretionary. *Latham v. Spedding*, 2 L. M. & P. 378.¹

¹ See now Stat. 15 & 16 Vict. c. 54, s. 4.

4. *Judge's discretion.*—*Concurrent jurisdiction.*—The Court will not review the discretion of a Judge in refusing or granting a certificate for costs under the County Courts' Act, 13 & 14 Vict. c. 61, s. 13. *Palmer v. Richards*, 6 Exch. R. 335.

5. "*May.*"—*Authority and not discretion.*—Sect. 13 of the 13 & 14 Vict. c. 61,—which enacts, that where a plaintiff shall make it appear to the satisfaction of the Court, or to a Judge at Chambers, that the action was one in which the Superior Courts had concurrent jurisdiction within sect. 128 of the 9 & 10 Vict. c. 95, or which could not have been brought in a County Court, or which was removed by certiorari, the Court or Judge "may" give the plaintiff costs,—confers an authority, and not a discretion, upon the Court or Judge; and the Court or Judge are bound to allow the plaintiff his costs where the case comes within any one of the three cases mentioned in that section. *M'Dougal v. Paterson*, 2 L. M. & P. 681.

6. *Exercise of power of Judge to give costs under 13 & 14 Vict. c. 61, s. 13.*—Where a plaintiff, in an action in the Superior Courts, recovers damages not exceeding those named in Stat. 13 & 14 Vict. c. 61, s. 11, but shows, to the satisfaction of the Court or of a Judge at Chambers, that the action was brought for a cause in which concurrent jurisdiction is given to the Superior Courts and County Courts, under Statute 9 & 10 Vict. c. 95, s. 128, or for which no claim could have been entered in a County Court, or which has been removed from a County Court by certiorari, he is entitled, under Stat. 13 & 14 Vict. c. 61, s. 13, to his costs *ex debito iustitiæ*; and the Court or Judge has no discretion as to granting or refusing them. *Crake v. Powell*, 2 E. & B. 210.

7. *Execution under sec. 94, after part payment.*—*Mandamus for process how directed.*—If a plaintiff in the County Court, having obtained judgment for debt and costs, receives payment of the debt only, he may, under Stat. 9 & 10 Vict. c. 95, s. 94, require the clerk of the County Court to issue execution against the debtor's goods for the costs only; although the Judge's order in the cause directed that payment should be made to the clerk at the Court-house, and the debt was not paid there or to the clerk at any place.

A mandamus to issue execution in such case is properly directed to the clerk, and not to the Judge. *Regina v. Fletcher*, 2 E. & B. 279.

And see *Appeal Costs; Certificate for costs; Certiorari*, 3.

JURISDICTION.

1. *Prohibition.*—By Stat. 1 & 2 Vict. c. xxxiii. (local and personal, public) s. 18, a paving rate may be imposed on the occupiers of premises in B. in the county of C.; and, in case of non-payment, "the same shall be levied by distress and sale of the goods and chattels of such occupier," "or shall be and may be sued for and recovered, together with full costs

of suit, in any of her Majesty's Courts of Record at Westminster."

On motion for a prohibition in a plaintiff brought to recover 8*l.* 10*s.* 8*d.* for such a rate in the County Court of C.,

Held, that, though the action given by Stat. 1 & 2 Vict. c. xxxiii., was only in the Superior Courts, it was a plea of personal action within Stat. 9 & 10 Vict. c. 95, s. 58; and the County Court had jurisdiction to try the plaintiff. *In re Stuart v. Jones*, 1 E. & B. 22.

2. *Power of Judge to nonsuit.*—*Summons.*—*New trial.*—The defendant, a brewer, let to the plaintiff a public-house, on the terms (among others) that the plaintiff should purchase of the defendant all the malt liquor consumed on the premises: provided that, in case of any breach of that agreement, the plaintiff should forfeit, as liquidated damages, the sum of 50*l.*, secured by the promissory note of the plaintiff. The defendant indorsed over the note for value; and the plaintiff having been compelled to pay it, entered a claim in the County Court against the defendant, and stated in the summons and particulars, that "the cause of action was money paid for the use of the defendant to the indorsee of the note, for which he never received from the defendant any value or consideration." At the trial, before a jury, it appeared that, on the plaintiff's taking possession of the premises in October, 1849, he commenced ordering beer from the defendant, and continued to do so until February, 1850. The plaintiff proposed to prove that the beer supplied by the defendant subsequently to Christmas, 1849, was unmarketable. This evidence was objected to, but received by the Judge. The defendant submitted that there was no case for the jury, and that the plaintiff must be nonsuited. The plaintiff refused to be nonsuited; and the Judge left it to the jury to say whether the liquor supplied by the defendant was of a marketable quality; and they found a verdict for the plaintiff. On appeal to this Court under the 13 & 14 Vict. c. 61, the case, which was stated by the Judge, set out his direction to the jury, though not necessary to render intelligible the points of law which he formally submitted for the opinion of the Court: *Held*, in answer to the questions so submitted,—1st, that the term "nonsuit" in the 9 & 10 Vict. c. 95, has the same meaning as in ordinary legal proceedings, and consequently that the County Court Judge had no power to nonsuit the plaintiff against his will, but, in the absence of any case for the jury, should have directed a verdict for the defendant.

2ndly. That the same rule of construction should be applied to the summons and particulars in the County Courts as in the Superior Courts; and therefore, in this case, the summons and particulars sufficiently described the cause of action, as the defendant could not have been misled by them; and that evidence as to the quality of the beer was admissible under them.

Held, also, that, under the 13 & 14 Vict. c. 61, ss. 14, 15, the Court of Appeal is not con-

fixed to the precise questions submitted to them, but may decide upon the whole case as stated; and therefore, looking at the summing up in this case, it was erroneous; for the circumstances of the defendant having on one or two occasions supplied the plaintiff with bad beer, did not authorise him to avoid the contract, but he should have returned the beer, and, if better were not sent instead of it, he might, on the particular occasion, procure some elsewhere; and if the defendant continued to send bad beer, he might sue him on the implied contract that he would supply beer reasonably fit to be drunk. *Stancliffe v. Clarke*, 7 Exch. R. 439.

3. *Residence of one of several plaintiffs.—Concurrent jurisdiction.*—Where one of several plaintiffs dwells more than 20 miles from the defendant, the Superior Courts have concurrent jurisdiction with the County Court. *Hickie v. Salamo*, 8 Exch. R. 59.

Cases cited in the judgment: *Parry v. Davies*, 1 L. M. & P. 379; *Doyle v. Lawrence*, 2 L. M. & P. 368.

4. *Incorporeal hereditaments.—Franchise.—Claim of custom.—Wharf.*—A claim of a custom for the occupiers of a wharf on a navigable river to overlap the adjoining wharfs with their vessels, when being loaded or unloaded, does not raise any question of title to an incorporeal hereditament or a franchise, so as to exclude the jurisdiction of the County Court by the 58th section of the 9 & 10 Vict. c. 95. *Davis v. Walton*, 8 Exch. R. 153.

5. *To adjudicate on trespasses committed.—Semble, (Platt, B., dissentiente),* that the 9 & 10 Vict. c. 95, s. 118, which empowers the Judge of a County Court to adjudicate on all claims made "to or in respect of any goods," &c., "taken in execution under the process" of the Court, applies to claims made in respect of trespasses committed upon the claimant's house in the course of seizing the goods, as well as in respect of the goods seized. *Tinkler v. Hilder*, 7 D. & L. 61.

6. *Carrying on business within.—Clerk in public office.*—To entitle a defendant to enter a suggestion on the roll to deprive the plaintiff of costs under the 10 & 11 Vict. c. 71, ss. 40 and 113 (the London Small Debts' Act), on the ground that the defendant carried on his business within the jurisdiction of the Court thereby established; it is not sufficient to show that the defendant is a clerk attending a public office within the jurisdiction, but residing elsewhere. *Buckley v. Hann*, 7 D. & L. 188.

7. *Cause of action arising within.*—The words in section 40, "if the cause of action arose therein," mean the whole cause of action. Where, therefore, in an action by the indorsee against the acceptor of a bill of exchange, it appeared that the indorsement was written within the jurisdiction of the London Small Debts' Court, but the delivery to the plaintiff took place out of the jurisdiction: *Held*, that case was not within the section. *Buckley v. Hann*, 7 D. & L. 188.

8. *To commit judgment debtor for non-payment of debt.—Discharge by Insolvent Court.*—The Judges of the County Courts have jurisdiction under the 9 & 10 Vict. c. 95, s. 99, to commit a judgment debtor for non-payment of a debt for which a judgment had been recovered in a County Court, although the debtor has been discharged as to such debt by the Insolvent Debtors' Court. *Abley v. Dale*, 2 L. M. & P. 433.

9. *Claim by residuary legatees against executors.*—Where real or personal property is left to executors upon trust to sell, and, after paying certain legacies, to divide the residue among certain persons, the County Court has jurisdiction, under sect. 65, of 9 & 10 Vict. c. 95, to adjudicate on a claim made by one of such persons for a share of the residue, in a claim against the executors. *Pears v. Williams*, 2 L. M. & P. 515.

10. *Nonsuit.*—The Judge of a County Court may nonsuit a plaintiff in all cases in which a Judge of a Superior Court may do so. *Robinson v. Lawrence*, 2 L. M. & P. 673.

11. *Replevin.—Title in question.—Removal of cause.*—The County Court has still cognizance of replevin though title comes in question, subject to the power of removal by either party, under section 121 of Stat. 9 & 10 Vict. c. 95. *Regina v. Raines*, 1 E. & B. 855.

12. *Consequences to Judge of acting without.—Liability in trespass.*—A Judge of a Court of Record is answerable in an action for an act done by his command when he has no jurisdiction and is not mis-informed as to the facts on which jurisdiction depends.

The plaintiff, who dwelt and carried on business at Cambridge, out of the jurisdiction of the Spilsby County Court, was sued in that Court by leave of the Judge, under Stat. 9 & 10 Vict. c. 95, s. 60, the cause of action having arisen within the jurisdiction of the Court; and judgment was duly obtained against him. Afterwards, while the plaintiff still dwelt and carried on business at Cambridge, a judgment summons was issued by order of the Judge of the Spilsby Court, under s. 98, calling upon the plaintiff to be examined as to his estate and effects; and, the plaintiff not appearing, the Judge, knowing the facts, but believing, nevertheless, that he had authority, made an order that the plaintiff should be committed for his contempt.

Held, that the commitment was without jurisdiction; and that, as the Judge had ordered it under a mistake of the law, and not of the facts, he was liable in trespass. *Houlden v. Smith*, 14 Q. B. 841.

13. *Devise.—Charge on realty and personally.—Prohibition.—Certiorari.*—A plaintiff in a County Court claimed, by his particulars of demand, 17l. 8s., "due from the defendant as administratrix of D., for that W. by his will bequeathed to D. certain freehold hereditaments, and also leasehold and other personal estate, on condition of D. paying unto the plaintiff 4s. a week during

her life. And *D.*, on the death of *W.*, accepted the bequest, and entered into possession, and enjoyed the aforesaid freehold and personal estate, and duly paid the weekly sum during his life; but since his death the defendant, although she has possessed herself of the hereditaments, goods, &c., of *D.*, to an amount more than sufficient for the purpose, has refused to pay the plaintiff." It appeared, that, on the death of *D.*, the freehold estates so bequeathed descended to his nephew and heir-at-law, a minor. On motion for a prohibition, *held*, that the sum in question was claimed as a *debt*, and, consequently, the County Court had jurisdiction. But this Court ordered a certiorari to issue on account of the legal difficulties in the case. *Longbottom v. Longbottom*, 8 Exch. R. 203.

14. *Set-off—Abandonment of excess.*—The County Court has no jurisdiction to try a cause where the plaintiff, on the face of the summons, claims a sum exceeding 50*l.*, although he thereby also proposes to allow a set-off to reduce it below that sum, where such set-off has not been allowed by the defendant before action, or admitted by him at the trial.

In such case the County Court cannot obtain jurisdiction by the plaintiff's offering at the trial to abandon the excess above 50*l.* *Awards v. Rhodes*, 8 Exch. R. 312.

Cases cited in the judgment: *Woodhams v. Newman*, 7 C. B. 654; *Beswick v. Capper*, 7 C. B. 669; *Kimpton v. Willey*, 19 Law J., C. P., 269; 1 L. M. & P. 280.

15. *Action on judgment.*—An action does not lie on a judgment in one of the new County Courts. *Berkeley v. Elderkin*, 1 E. & B. 305. And see *Concurrent Jurisdiction: Title.*

TITLE IN QUESTION.

Decision of County Court Judge questioned in prohibition.—Declaration in prohibition, stating a plaintiff in the County Court prosecuted by one Batty for use and occupation of land by Thompson (plaintiff in prohibition), who appeared and protested that the title to the said land was in question: averment, that in fact the title was in question in the action. Plea, that, when Thompson appeared and protested, Batty also appeared and protested, that the title was not in question, and required the defendant in prohibition, being judge, to hear and determine the action; that thereupon defendant, then being judge, did hear and consider the evidence, &c., of the plaintiff in prohibition in support of his said protest, and also the evidence, &c., of Batty on the other side, and having heard and considered, did adjudge that the title was not in question.

Held, that, if such a plea admits the title to be in question, it is bad, for want of jurisdiction in the Judge, by Stat. 9 & 10 Vict. c. 95, s. 58; but, if it be taken as pleading the decision of a competent Court, it is equally bad; for, although the inferior Court must determine the point in the first instance, yet, there being no writ of error from the County Court, the

question must be open to the Superior Courts on motion for a prohibition; and, on declaration in prohibition, the question is one of fact, to be decided by evidence. *Thompson v. Ingram*, 14 Q. B. 710.

Case cited in the judgment: *Regina v. Bolton*, 1 Q. B. 66.

2. Corporeal hereditaments.—Jurisdiction.—

On the trial of a plaintiff for a trespass committed by breaking the doors of certain rooms in a cottage of the plaintiff, the plaintiff's case was, that he had let the defendant a portion only of the cottage, and had reserved to himself the rooms in which the trespass was committed. The defendant's case was, that the plaintiff had let him the whole of the cottage: *Held*, that title to a corporeal hereditament was in dispute under the 58th section of the 9 & 10 Vict. c. 95, and that the County Court had no jurisdiction over the plaintiff. *Chew v. Holroyd*, 8 Exch. R. 249.

3. *Action for use and occupation.*—A plaintiff was brought in a County Court for use and occupation. It appeared that the plaintiff demised the premises to defendant for a year, from Michaelmas, 1850, and defendant occupied from that date up to the time of the trial. Defendant paid the rent to plaintiff, for the half year up to Lady Day, 1851, but refused to pay rent afterwards. It was proved that *J.*, claiming to be plaintiff's landlord, had given plaintiff notice to quit, expiring at Lady Day, 1851, and ordered the defendant not to pay plaintiff rent after that day; and that plaintiff and *C.*, a deceased occupant of the premises in question, had paid 10*s.* rent to *J.* Plaintiff contended that this payment was for a part only of the premises; defendant, that it was for the whole. Defendant offered to prove by declarations of *C.*, the deceased tenant, that *C.* paid the rent for the whole. The Judge rejected the evidence; but gave judgment for defendant, on the ground that plaintiff's title had expired as to part, and that the rent was not apportionable. On appeal on a case stating the above facts,

Held, that the judgment could not be supported; that the evidence ought to have been received; and that, if, when received, it showed that the defence was *bona fide*, it would sufficiently raise a question of title to deprive the County Courts of jurisdiction under Stat. 9 & 10 Vict. c. 95, s. 58. *Mountney v. Collier*, 1 E. & B. 630.

4. *Nuisance.—Action under 11 & 12 Vict. c. 123.*—The amount paid for carrying into force an order of two justices to abate a nuisance, under Stat. 11 & 12 Vict. c. 123, may, under the provisions of sect. 3, be recovered in the County Court from the owner of the premises where the nuisance existed, though title to land comes in question.

Seem, that title comes in question if the party sued, as owner of land, denies that he is owner. *Regina v. Harden*, 2 E. & B. 188.

And see *Jurisdiction*, 4, 11.

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TRANSFER OF LAND.

SUGGESTIONS OF THE CHANCERY COMMISSIONERS.

OUR readers have already been made acquainted, somewhat in detail, with the schemes submitted to Parliament, by Mr. Drummond and Mr. Vincent Scully, for facilitating the sale and purchase of land.¹ It is quite true that neither of these plans have obtained the sanction, or even the express approval, of either branch of the Legislature, and, considering the nature and complexity of the subject with which they propose to deal, and the manifestly inadequate nature of the machinery provided, it can hardly be anticipated that either of those Bills, in its present shape, will be considered by Parliament to afford a satisfactory remedy for the evils complained of. Still, it is abundantly clear, that the difficulties which impede the transfer of land have begun to be strongly and generally felt by those most interested in this description of property, and that many thoughtful and intelligent minds have arrived at the conclusion, that these difficulties are, to some extent, created by the state of the law, and may be diminished, though not wholly removed, by legislative interference.² It does not require a profound consideration of the subject to understand, that much of the complexity which surrounds it, arises from the circumstance that land, from its permanent and immovable character, may be dealt with advantageously in a manner

different from any other species of acquisition, and that the number of incumbrances and charges affecting it, may be traced to the peculiar and distinctive nature of the property. However inconvenient it may be to the owner, or injurious to the public, that an estate should be burthened with charges and trusts, it is the result of arrangements by which the exigencies of a complicated and artificial state of society have been, in most cases, effectually supplied. Land has been made the subject of multiplied incumbrances because they can be made to attach to it more securely and appropriately than to any other known description of property; and to prohibit the owner of land from affecting it by charges or trusts, to operate immediately or prospectively, is to restrict him in the enjoyment of his property.

It is to be feared, that these considerations, which are patent, and meet us at the threshold, are often overlooked by those who decry the present system as if it had been the result of some deep laid scheme of the territorial aristocracy and the lawyers, to prevent the alienation of landed property, and who are fond of asserting that there is no conceivable reason why land should not be transferred in the same manner and with as little formality as a bale of cotton, or 100*l.* three per cent. consols!!

Our readers can readily appreciate the difference between those who would rudely overthrow a system based upon the necessities and the requirements of society, and those who would amend and improve it, and it is hardly necessary to add, that, in this instance, as in most others, our humble assistance and suggestions are intended for, and can only be useful to, those who desire to reform, and not to destroy.

The legal difficulties which interfere with the alienation of land, are generally sup-

¹ Mr. Drummond's Bill is analysed in the last Volume of the Leg. Obs., p. 426, and Mr. Scully's, at p. 445.

² The subject is ably treated in a pamphlet published by Saunders & Otley, at the close of the last year, and attributed to a "Right Hon."

posed by those who have addressed themselves especially to the consideration of the subject, to arise—1st, from the doctrine of trusts; 2ndly, from the doctrine of express and constructive notice; 3rdly, because a real representative of the owner cannot *always* be found upon the death of the owner of land; and lastly, because trustees in whom land is vested, have not power in *all cases* to act for the persons beneficially interested.

The doctrine of trusts, which is supposed to interfere injuriously with the transfer of real property, is the rule laid down by Courts of Equity, that a trust, properly created, attaches to the land intended to be made subject to it, so as to convert all persons acquiring the legal interest (exclusive of purchases for valuable consideration without notice) into trustees.³

The doctrine of express and constructive notice is condemned; because Courts of Equity hold, that a purchaser with notice of a trust is bound by the trust, in the same manner as if it attached upon the land; and because a purchaser without any personal knowledge of a trust, is held to be bound by notice to his counsel, solicitor, or agent. So it has been holden, that what is sufficient to put a purchaser upon inquiry is good notice, and that if a purchaser knows the legal estate is in a third person, and not in the vendor at the time of the purchase, he is bound to take notice what the trust is;⁴ or if the purchaser has notice that part of the estate is in possession of a tenant, it amounts to constructive notice of a lease.

The inconvenience arising from the want of a real representative, in the event of the death of a person to whom the land had been transferred, is considered by many to be the monster evil which at present fetters the transfer of land. It is attempted to be met, and a remedy suggested in both the Bills submitted to Parliament during the last Session, and it is positively referred to in the recent report of the Chancery Commissioners, who have expressed a clear and unqualified opinion, not only that a representative of the real estate of a deceased person should be provided, but also that the representative created should have the same power of dealing with real estate that an executor or administrator has with respect to personalty. The passages in the

report in which this conclusion is arrived at are as follow:—

“We think it most desirable that the principle of representation, now applied to personal property, should be universally applied to all cases of real property and to all cases of trust estate. Courts of Equity, in their great anxiety to do complete justice and afford complete protection to the *cestui que trust*, have created embarrassments and difficulties for third persons, who had claims to make and rights to assert against the trust estate, and have thereby, in many cases, materially prejudiced the interests which they have sought to take under their special protection.”

After pointing out how heavily costs fall upon *cestui que trusts*, and observing that the burthen of costs does not seem “to have been adequately appreciated in the system adopted by Courts of Equity,” the report proceeds as follows:—

“We think it most desirable that, in cases of trust property, the trustees should, for all purposes in equity, represent it in the same manner, and to the same extent, as executors or administrators do the estates entrusted to them, and as assignees do the estates of bankrupts and insolvents. We also think, that a representative of the real estate of a deceased person should be provided, who should have the same powers of representing and dealing with the real estate, as the executor or administrator has with the personal estate.”

It will be observed, from the foregoing extract, that the report of the Chancery Commissioners suggests, that the person in whom the real estate is vested should be considered *for all purposes* as entitled to represent and act for those beneficially interested in land, to avoid the inconvenience and expense arising from the operation of the rule requiring all the *cestui que trusts* to be parties to a suit relating to the trust property. But the Commissioners have stopped here, and have not very clearly pointed in what terms the legislative provisions should be framed by which their recommendations to appoint a representative of the real estate of a deceased person, and to confer on such person the authority to act for all parties interested, should be carried out. It may be admitted, that considerable progress has been made in ascertaining in what direction reform is needed, to facilitate the sale and purchase of land, and get rid of the existing difficulties which impede its transfer; but the machinery by which the improvement can be effected is

³ Sanders on Uses and Trusts, 5th ed., pp. 280, 388.

⁴ See Cases of Constructive Notice, enumerated in Sugden on Vendors and Purchasers, ed. 1851, p. 602.

⁵ Report of Chancery Commissioners, pp. 15 & 16.

yet to be devised and approved by the Legislature.

That the subject will be revived, and put in a train for early legislation, soon after the re-assembling of Parliament, there is good reason to believe, and there is no pending question, connected with the reform of the law, more important to the interests of the Legal Profession and the Public, and in reference to which it is more desirable that the former, at all events, should be prepared and well informed.

The registration of assurances is now admitted on all hands to depend upon the measures to be adopted by the Legislature for facilitating the sale and transfer of real property, and may be justly regarded as, in every sense, a subordinate question.¹

REDUCED DUTY ON ARTICLES OF CLERKSHIP.

INCREASE OF PROFESSION. — PREMIUM. — EXAMINATION.

We are informed, that since the reduction of the Stamp Duty on Articles of Clerkship, which took place on the 4th August, a larger number of articles than usual has been registered at the Masters' Office. It must not, however, be supposed that the difference between 120*l.* and 80*l.* has caused much, if any, increase. The explanation, we think, may be found in the fact, that the Chancellor of the Exchequer having, in the month of April last, announced his intention of reducing the duty, many persons suspended the execution of their articles until the Act passed, or availed themselves of the privilege of stamping them within six months after their date. Thus, after the passing of the Act, on the 4th August, the number of registrations was naturally increased.

On the effect of this reduction of duty, we shall have something to say hereafter; but for the present may observe, that it is, of course, quite in the power of the Attorneys themselves to prevent the admission into the Profession of improper persons, who may be tempted by the reduction of the duty to offer themselves as articulated clerks. In fact, the heavy tax upon the articles, which in many instances used to be urged as a reason for taking a smaller premium, need not now be so much regarded.

¹ The evidence of Mr. Cookson, Mr. Field, Mr. Williams, and Mr. Bullar, before the Select Committee of the House of Commons, contained in the Report of 5th August, is highly important on this subject.

It will be recollected, also, that before the project was announced of reducing the duty, the Examiners had given notice, with the sanction of the Judges, of an Examination in Conveyancing and the Law of Real Property, as well as in Common and Statute Law and Equity and the Practice of the Courts. A due degree of strictness in these Examinations, not only into the practice, but the *principles* of all departments of the Law, and full inquiry into the *conduct* of the clerks (which the Rules of Court authorise and require), will secure the learning and respectability of the members of the Profession better than any pecuniary qualification.

CONSOLIDATION OF THE STATUTES.

MR. COODE'S REPORT.

CONSIDERABLE delay has occurred in printing and publishing the Reports of the Commissioners on the Consolidation of the Statutes. The reports were laid on the table of the House of Lords, by the Lord Chancellor, in August last, and evince extraordinary diligence and research on the part of the Commissioners. The labours they have accomplished in the course of a few months have been most extensive, and the materials they have collected are exceedingly valuable, both to the Lawyer and the Legislator.

Selections from some of these reports have been published in one of the Law Periodicals, but we have not seen any extracts from Mr. Coode's Report, which appears to us to deserve peculiar attention. In his remarks on the utility and necessity of consolidating the Statutes, we entirely concur; and, on the other hand, we think the utter impracticability and palpable danger of any attempt at the codification of our elastic principles of Common Law are convincingly proved. We shall from time to time, as opportunity offers, go through these reports of the Commissioners. And, for the present, we submit to our readers the following extracts from Mr. Coode's Introductory Observations.

Mr. Coode has submitted as his contribution to the labours of the Commission for Consolidating the Statute Law, the following papers:—

1. On the Collection of the Materials for Legislation or Consolidation, their Collation and Connexion;

With an Appendix, being a specimen of

a Chronological Register of the Statutes in force, their Duration, and Inter-operation.

2. On the Digestion of the Materials for Legislation and Consolidation ;

On their Analysis ;

On their Recomposition ;

On their Expression ;

With two Appendixes ;

The first,—being Suggestions as to the Preparation of Compilations of the Existing Law, to precede or accompany Bills in Parliament ;

The second,—exemplifying the operation of Digesting, being a Digest of the Acts for the Relief of the Poor.

3. On Consolidation.

4. On Subsequent Legislation, with a view to preserve the order and consistency of the law after Consolidation.

Mr. Coode observes, that the task of consolidation is simple in regard to the Statute Law, for so much of this as is of general importance is all contained within the limits of some 40 quarto volumes, and what is really in force constitutes but a very small part even of these. It is all already expressed in some terms, printed, and accessible in the very same letters to every man. However wide the differences in the interpretation that one man or another may put upon them, these terms themselves are still there in print, unchanged, and always producible to test the justness of every applied interpretation judicial or non-judicial.

"It is widely wholly different with the Common Law, which consists in the principles exemplified in and deducible from the free usage of the community, and includes all that practice can possibly develop or scientific reason consistently apply to all cases arising in the whole course of time. Its operation is exemplified in innumerable text books and reports of decisions ; but its terms and limits are nowhere laid down authoritatively, except only so far as it is excluded by Statute. To fix the Common Law definitively in the language of this day, is to paralyze judicial interpretation, to arrest the expansion and application of its doctrines to the course of events and the developing circumstances of successive times. The legislature itself in England has never attempted it. Declaratory acts which appear sometimes to declare the effect of the Common Law, never in fact do more than include a doubtful, perhaps a new, case within its operation. Authors, counsel, judges, sometimes attempt to define its limits ; and some of them have, in some instances, done it with more or less success ; but the greatest success in this way compels acquiescence in the definition only just so long as the definition is found to be consistent with the facts and circumstances to which it

comes to be applied. It is attacked, modified, overthrown, so soon as occasion demonstrates its further inapplicability.

"To consolidate the Common Law then, is to change its present expansive character entirely, to render from the moment of that operation its interpretation and application a miserable construction of mere forms of words, instead of a development by induction, deduction, and analogy of all necessary consequences and all consistent inferences from principles manifest in known practice and decided cases, but as yet unrestricted by any fixed form of words. This would be, in fact not consolidation, but a most extensive and unprecedented exercise of legislative power,—one as yet never arrogated by the legislature itself.

"What the legislature has done, and can always do beneficially, is merely to take from time to time out of the domain of the Common Law so much as appears practically to require the application of another rule than that of the Common Law. This is usually done with all possible safeguards against hasty and excessive encroachment on its principles. But being so done the Statutory rule which supersedes the Common Law, being limited by the terms in which it is expressed, is susceptible of reconstruction, translation, division, analysis, and recomposition, as all other intelligible forms of words are, without danger, if proper care be used, either of extending or contracting its sense or operation. And this, which is constantly done with manifest advantage, is understood in these papers to be the sole object at present of the process of consolidation ; and accordingly the whole tenor of the observations in these papers is confined to the consideration how this statutory matter may be best reproduced in a new statutory form without change of its effect or extent, and without encroachment on the Common Law."

These papers stop short of the attempt to reduce the law into a *systematic Code*, or even to advocate such an attempt. In truth, the writer does not consider the object to be at present either feasible or desirable.

"No doubt, a nation in which one homogeneous Common Law, developed by its own free usages in 1,400 years, administered universally and consistently by one undivided judicature, amended and expanded in all such a period by one undivided legislature, might, in some caprice or under some hallucination, resolve to have all the flexible and expansive principles of its Common Law fixed and cramped in the words and forms of a statute or code. But no such folly has ever yet, in fact, possessed even a village, still less an empire thus happily circumstanced. The Roman edicts and codes before Justinian, and his Digest, and Codes, and Novels, were nothing of this kind. There was no Common Law in the multitudinous provinces of the Roman empire, and the Digest itself is but an undigested

though meritorious collection of cuttings and scraps taken *verbatim et literatim* from the works of jurisprudential writers of more or less repute and authority; and the Code is an appendix of occasional and arbitrary edicts of successive emperors, arranged with some method, but in no respect resembling a code such as is recommended in recent times. The French Code was a resource of necessity, imposed, not chosen, upon the breaking up of innumerable provincial and local customs, upon the sudden introduction of a common national legislature and common tribunals, and where there was no semblance of a pre-existing Common Law. It was such a case as the sudden extension of one authority throughout the Heptarchy might have been, if multiplied in its operation about sixfold, and is as little applicable to the present circumstances of England and its Common Law, the slow, deliberate, free, popular, and homogeneous product of 1,400 years of usage, legislative effort, political contest, and revolution of an undivided nation, and a concentrated legislature and administration. It would be out of place here to pursue this topic; but it seems safe to assume that, without clear and express commission to do so, it would be a rash usurpation of a most perilous function to attempt to reduce all the expensible and infinitely developable principles of the Common Law of England into the terms and forms expressive of the conceptions of a compiler of the year 1853.

"It is assumed then in these papers that the Statute Law already reduced to terms and producible, is to be cleared of manifest superfluities, reduced to order by a methodical arrangement without change of parts, and that a consistent construction as to language is to be adopted also, so far as this involves no change in effect, but that all such changes in effect, whether in the Statute Law itself, and still more in the Common Law, however palpably justified by the process of consolidation, are still to be left to the ordinary course of practical legislation. In fine, these papers contemplate, not the policy or the practical motives of legislation, but only the form and the expression in which the Statute Law may be most conveniently and best exhibited, either in one operation, as in a consolidated Act, or in successive operations in the amendments, which circumstances and experience from time to time require. They recommend no change in substance whatsoever, but, on the contrary, aim at the reproduction only of the identical effect of the existing law, and the literal and implicit and ministerial fulfilment of whatsoever may be the future and varying purposes of the legislature."

The following remarks of Mr. Coode, on the present defective system of reporting judicial decisions and promulgating legislative enactments, are just and important:—

"The judicial result, giving effect, consistency, and definiteness to a rule, is overlaid by

the narrative of the circumstances of the case, the recital of the pleadings, the report of the arguments of the counsel, and of the reasonings of the Judge; and the small modicum of result, the effective judicial decision thus encumbered, reported by one reporter, is separated by an indefinite number of volumes of similar reports, and by intervals of years and ages, from its nearest analogue, the next judicial decision that extends or qualifies it. And just so the Act of Parliament which extends or limits an old rule, or introduces a new one, instead of being expressed as part of the terms of the rule thus modified, or in proper co-ordination with analogous rules, is registered in the Statute Book according to the accidental date of its passing, encumbered with preambles and provisos, and non-obstante clauses, dislocated from the body of law of which it is logically a member, and cast locally into the midst of others having no discoverable connexion with it. Thus we find that a rule established and defined by centuries of experiment and discussion, and perhaps elaborated with perfect self-consistency, is registered in disorderly and cumbrous fragments, in a score of Statutes, and a hundred reported cases.

"It is this unnecessary and mischievous encumbrance of the rule, by the mode in which it is thus accidentally registered, that is most justly to be complained of. This it is that most impedes legislation, and so often causes it to be obscure, inaccurate, and inconsistent. This makes jurisprudence so laborious, and so often uncertain in its progress, and conceals, in husk and chaff, the precious kernel of the law."

On the remedy for these evils, Mr. Coode thus writes:—

"The first object, then, of the course proposed by these papers is, to ascertain the effect of the matter of the Statute Law, thus overlaid and dislocated, and the relations and connexion of all its parts, and to present them in intelligible language and lucid order. Besides the immediate popular utility involved in this operation, it will necessarily tend to enable the legislature, on all subsequent occasions, with increased facility, comprehensiveness, and effect, to preserve in its future Acts the connexion and order once realized, and to proceed directly, and with the least possible incumbrance, in its natural course of supplying all defects, as they become visible, removing apparent anomalies, reconciling apparent inconsistencies, and by degrees realising, by the light of experience, that minute, detailed, and pervading practical agreement between the laws themselves and the interests they protect, which is the only consummation of simplification and system worth consideration in the development of a body of practical law."

NOTICES OF NEW BOOKS.

The Act for the better Regulation of Charitable Trusts. With copious Notes and an Introductory Essay, on the History of Charitable Trusts, and the Laws relating thereto, and on the Jurisdiction exercised over them by the Court of Chancery, with Notes of the chief Cases. To which is added an Appendix, containing Precedents of Schemes, &c. By W. F. FINLASON, Esq., of the Middle Temple, Barrister-at-Law, Author of "History of the Laws of Mortmain," "Essay on the History and Principles of Pleading," Editor of "The Common Law Procedure Act," &c. London: V. & R. Stevens, and G. S. Norton. 1853. Pp. 176.

DURING the progress of the Charitable Trusts Bill through Parliament, and since it received the Royal Assent, we have laid before our readers various suggestions and observations which appeared to us deserving of consideration; and, whilst we are willing to notice any publications on the scope and operation of the Act, we cannot at present enter at large on the changes which it has effected in the future administration of trusts, and the important branch of Law relating thereto.

Mr. Finlason, in the work before us, thus describes (with some pomp and magnificence) the early history of charitable trusts:—

"Ten centuries have passed since the ancient institutions which form the basis of our modern charitable trusts were founded. Five hundred years have elapsed since the fundamental principle upon which such trusts should be administered—a sacred adherence to the will of the donor—was laid down, in the age of our Edwards. Three hundred years ago a most admirable and valuable measure—the Act of Elizabeth—passed, for the due enforcing of that principle, and the 'redress of frauds and breaches of trusts.' A century has rolled by since that Act, by reason of altered circumstances and change of national character, became obsolete. It is half a century since some of the first of our lawyers and the greatest of our statesmen began to labour for the same great object which had tasked the talents of Coke, of Bacon, and of Moore: and the names of Romilly and Brougham were associated with the earliest attempts of our modern age, to secure a due administration of charitable trusts."

The Author then passes on to very recent times in the following rather elevated style:—

"It is near seven years since the great mind

of one of the most illustrious of our living senators, uniting the abilities, both of a lawyer and a statesman, bent itself to the noble labour. Succeeding years have seen successive measures introduced, with a similar object, engaging the attention, in turns, of all our most distinguished living lawyers; and the fruit of these noble precedents and protracted labours is the Act which it has been the writer's endeavour to illustrate. A measure of which so ancient and so eminent have been the antecedents, seemed a fit subject for the exercise of some historical research, and to demand a somewhat large scope of collateral elucidation; and the nature of the Act rendered that a necessary duty which, even otherwise, would have been a natural and interesting task. For it is, in a great degree, founded upon preceding legislation, and linked with existing jurisdictions, the elucidation of which appeared its most obvious illustration, and, coupled with an explanation of its own provisions, best calculated to exhibit its subject-matter and its scope."

Mr. Finlason thus sums up the scope of the Statute:—

"The measure establishes a domestic forum, to attain the same results as the visitatorial system, founded on the principle of that system of supervision, to which charitable and religious trusts, in ancient times, were universally and exclusively subject. It is designed as a substitute for the admirable measure of Sir Francis Moore, and embraces in its ample scope the purview of the Act of Sir S. Romilly. It contains (so to speak) in solution the substance of other more recent and most important measures, such as the Irish Bequest Act and the Dissenters' Trust Act: it places in the hands of the Charitable Board, on the one hand, many of the high functions of the Attorney-General; and, on the other, all the powers of the modern Charitable Commissioners; and it enables them to invoke at pleasure the formidable and supreme powers of the Court of Chancery, whether under ordinary or extraordinary jurisdiction."

The Volume commences with an Essay on the History of Charitable Trusts and the Laws relating thereto, occupying 100 pages. The Act is then set forth in *extenso*, accompanied with full notes and many valuable annotations. An Appendix follows, containing Precedents of Schemes of Charities settled in Chancery.

THE LAW-CONFOUNDING SOCIETY.

To the Editor of the Legal Observer.

MR. EDITOR,—Having turned the edge of my sharpest razors in endeavouring to cut blocks pervious only to a mallet or a tomahawk, I am reduced to the necessity of resorting to those conclusive, if not convincing,

weapons, in carrying on my renewed controversy with the Law-Confounding Society. And this, perhaps, may be the last time that I may have to address myself to them by that name, it being understood that they are about soliciting a Royal Charter of Incorporation, in which to be designated by the less dignified, but more appropriate and characteristic style or firm of "The Right Worshipful Company of Tinkers." By which charter their existing President will be constituted their Grand or first Master, as indeed he will be virtually their last, as it is to be earnestly hoped that he will not in any such capacity have a successor. Should any unhappy casualty befall him, all breath would instantly depart from the nostrils of the corporation; for, in this instance, contrary to the more frequent acception, the individual is himself legion,—while the poor creatures constituting his component parts, or the pseudo-legion would, on his demise, subside into their native nothingness, and ne'er resume their dirty work again.

My present battle field is the large and increasing area of Bankruptcy and Insolvency,—the Laws of which, and the tinkering whereof, have occupied the mighty master's mind during the last quarter of a century. For upwards of two hundred years, the commercial public of this great commercial country were content with the Act of Queen Elizabeth slightly extended. In 1825, the first great change took place by an Act which was so hurried as to be avowedly imperfect when the Royal Assent was given to it on the last day of the Session. Of course, "amending" Acts came thick and threefold in every succeeding Session, and it so happened that one of such Acts, like its first parent, received the Royal Assent on the last day of one Session, and on the first day of the next a Bill was brought in for its repeal. It would be useless, if not ludicrous, to give the particulars of these successive changes. Suffice it to observe, that during the 25 years in question, 44 Acts in Bankruptcy and Insolvency have been passed, each in its turn being pronounced by the mover as the perfection of legislation.

And yet, marvellous to relate, it appears that we are all at sea again, with no one professed object attained, and still everything to learn, for behold her Majesty has been advised to issue a Royal Commission, authorising certain learned gentlemen (of course barristers of seven years' standing!) to define the meanings of the

terms Bankruptcy and Insolvency, to determine their application, and to devise means for carrying out the only useful practical result required by the trading public, namely, as cheap and expeditious a division among the creditors as was effected by the Act of Elizabeth.

And thus the *rasa tabula* will be restored, and a wet sponge happily applied to the entire mass of insolvent legislation, and by possibility some simple but effectual remedy be applied, while at all events there is some satisfaction in knowing, that any change whatsoever must be an improvement on the existing complicated, conflicting, and expensive machinery, and its staff of placemen and pensioners.

As in duty bound, we must wait for the Report of the Commissioners, in the hope that it may prove something very different from those special reports with which the Legal Profession have been hitherto favoured, their *value* being exactly coincident with their *weight*.

On the appearance of the anticipated Blue Book, I may have to address you once more. In the mean time I conclude with relating a singular incident which befell the prospective Master of the Worshipful Company adverted to, and which, I believe, is altogether unprecedented in the annals of English Jurisprudence, that of his having with wonted ingenuity prevailed on Parliament to pass an Act for simplifying conveyances, and yet, with all his ingenuity, being unable to prevail on any human being in or out of the Profession to adopt the proposed expedient. The measure being universally ignored, fell still-born from the table to the floor of Parliament, and if the wholesome Scotch doctrine of desuetude, were in force in England, the operation of the Act would be now altogether precluded; but although we have no such *caput mortuum* process, there is no apprehension of the revival of the Act; its absurdity, and impracticability, constituting our sufficient protection from any such mischievous interference with our titles to what we might have considered our land until the passing of the Succession Bill. I am, Sir,

Your obedient servant,

Athenæum, Nov. 1853.

M. M. M.

P. S.—I grieve to my heart's core to have had occasion so slightly to advert to a distinguished individual, who, having earned a transcendent name, and possessed of towering talent, now rendered venerable, though unimpaired, by age, should by evil companionship have incurred in equal measure

the pity and regret of the wise and good of his own Profession, with much abatement of confidence on the part of the judicious Public. Those engaged in this maze of confusing labour are, for the most part, a class of needy professional adventurers, who, incapable of rising by brilliant talent or plodding industry to any honourable standing in the Law, have recourse to a system of vulgar agitation by pandering to the ignorance of the Public, and at the same time are themselves occupied in soliciting offices and commissionerships under Government, in very despair of ever earning an independent position in their own Profession.

M. M. M.

LECTURES AT THE INNS OF COURT.

Constitutional Law and Legal History.

THE Public Lectures to be delivered by the Reader on Constitutional Law and Legal History, during Michaelmas Term, 1853, will embrace the following subjects:—

The Influence of the Canon and Civil Law on our Institutions and Courts of Justice—The Genius of the Feudal Law, and its Character in this Country and in France—The Changes in the Tenure of the Landed Property in England before the Accession of the House of Tudor—The Progress of Jurisprudence in Europe—The Changes in the Constitution during the Tudor Dynasty—The Conduct of Parliament and the Character of the Proceedings of the Courts of Justice, from the Accession of James the First to the breaking out of the Civil War.

In his Private Lectures the Reader will follow the same course, dwelling chiefly on our Domestic History and the Progress of Constitutional Principle and Legal Knowledge, as indicated by the Statute Book and the proceedings of our Courts of Justice.

The Reader on Constitutional Law and Legal History will deliver his Public Lectures at Lincoln's Inn Hall, on Wednesday in each week during the Educational Term commencing at Two P.M. The Reader will receive his Private Classes on Tuesday, Thursday, and Saturday morning in each week, from half-past Nine to half-past Eleven o'clock, in the Benchers' Reading Room, at Lincoln's Inn Hall.

Equity.

The Reader on Equity proposes to give during the ensuing Educational Term, Six Public Lectures on the History of the Court of Chancery; its Procedure, and Relation to the Courts of Common Law.

1. Judicial System of the Anglo-Saxons—Important Alterations effected on the Norman Conquest—The Aula Regia—The System of Writs—The Cancellarius—Establishment of the Superior Common Law Courts—The Chancellor of the Exchequer—Influence of the Civil Law—The Court of Parliament—Authority of

the Chancellor as sole Judge in Equity established.

2. Principles on which the Equitable Jurisdiction was established—Their early recognition—Reference to Conscience and the rules of the Casuists—The Clerical Chancellors—History of the Court since the Reformation—Subjects of Equitable Jurisdiction.

3. The Great Seal of England—Its Custody—The Privy Seal, Signet, and Sign-manual—The Court of Requests—The Star Chamber—Privy Council—Common Law side of the Court of Chancery—Jurisdiction of the Chancellor over Lunatics and Infants—Appeal from the Chancellor to the House of Lords.

4. Procedure in Chancery—Suit commenced by Writ of Scire facias—By Writ of Subpoena—English Bill—Process to compel Appearance—Recent Alterations in the Process—Defence by Demurrer—By Plea.

5. Relation of Pleadings in Equity to Pleadings at Common Law—Interrogatories—Practice of compelling a Defendant to answer on Oath—How far sanctioned by the Civil Law—Setting down a Cause on Bill and Answer—Mode of taking Evidence in Chancery—The Hearing—Adjournment to Chambers—Office of Master in Chancery—Its Abolition.

6. Nature of the relief afforded in Chancery—Judgments at Common Law—How far the Court of Chancery acts *in rem*—Specific performance of an agreement—Injunction—Powers of the Court under Statutes.

In addition to the Public Lectures, it is proposed that two Classes shall be formed, as during the preceding Terms, for the study of the Principles and Practice adopted by Courts of Equity: each Class to meet for one hour three times a week—The Junior Class will read Smith's Manual of Equity Jurisprudence, and Mitford's Pleadings in Chancery—The Senior Class will read Story's Commentaries on Equity Jurisprudence, the 2nd vol. of White and Tudor's Leading Cases, commencing with *Howe v. Earl of Dartmouth*; Mitford's Pleadings in Chancery, and Wigram's Points in the Law of Discovery. Each Student will be expected, in the intervals between the meeting of the Class, to peruse portions of these and other works pointed out by the Reader, and to be prepared, at the ensuing meeting of the class, to answer and discuss questions arising out of the subjects of their reading.

The Reader on Equity will deliver his Public Lectures at Lincoln's Inn Hall, on Thursday in each week during the Educational Term, commencing at Two o'clock P.M.—The Reader will receive his Private Classes on Monday, Wednesday, and Friday evenings, in each week, from seven to nine o'clock, in the Benchers' Reading Room, at Lincoln's Inn Hall.

Law of Real Property, &c.

The Reader on the Law of Real Property, &c., proposes to deliver, in the ensuing Educational Term, a Course of Six Public Lectures on the Power of Testamentary Disposition, and the Construction of Wills.

I. Introduction, General View of the Extent of the Testamentary Power with Reference to Real and Personal Property, previous to the passing of the 1 Vict. c. 26.

II. 1 Vict. c. 26. The Property which may be Disposed of by Will; sect. 3. The Capacity of Testators; sect. 7, 8, 11, 12. The Execution and Attestation of Wills; sect. 9, 10, 13—17.

III. On the Revocation and Revival of Wills: sect. 18—23.

IV. On the Construction of Wills.

1. The Operation of Residuary and General Devises; sect. 24—28.

2. The Construction of Particular Words; sect. 29.

3. The Estate taken by Trustees under a Devise; sect. 30—31.

4. Lapse; sect. 32—33.

The Lectures to be delivered to the Private Classes, will comprise the following subjects:— With the *Senior Class*, the text of *Sudgen on Powers* will form the basis of the Lectures; and the latest decisions, illustrating the principles there laid down, will be examined and commented on. With the *Junior Class*, the effect of recent Legislation upon the Practice of Conveyancing, with reference to the framing of Purchase and Mortgage Deeds, will be discussed.

The Public Lectures will be delivered in Gray's Inn Hall, on Friday in each week, at Two P.M. The Private Classes will be held in the North Library of Gray's Inn, every Monday, Wednesday, and Friday morning, from a quarter to Twelve to a quarter to Two o'clock.

Jurisprudence and the Civil Law.

The Reader on Jurisprudence and the Civil Law will deliver in the course of the ensuing Educational Term Six Public Lectures on the following subjects:—

On General or Scientific Jurisprudence—On some of the primary technical terms of Legal Science—On the relation of Law to Moral Philosophy—On the *Jus Gentium* of the Roman Jurists, and on some Modern Theories of Natural Law—On the Sources of the Roman Civil Law and the Composition of the *Corpus Juris*—On the Relation of the Roman Civil Law to General Jurisprudence—On the Order and Connection of the Departments of Law, and on the Systems of Classification adopted by certain Modern Jurists.

With his Private Class, the Reader will proceed regularly through the principal heads of Roman Law, following the order of topics observed in the Institutional Treatise of Gaius. The modern commentaries principally employed will be the *Institutiones* and *Commentarii Juris Romani Privati* of Warnkönig, the *Pandekten* of Puchta, and the *Institutes Nouvellement Expliquées* of Ducaurroy.

The following works will also be incidentally referred to, and portions of them recommended for perusal:—Dumont's *Bentham*, Austin's "Provinces of Jurisprudence determined," the

Esprit des Lois, the *Droit Civil* of Toullier, the *Doctrina Juris Philosophica* of Warnkönig, the *Histoire du Droit* of Herminier, the *Innere Geschichte des Römischen Rechts* and the *Aeusere Geschichte des R. R.* of Tigerstrom, the *Explication Droit International Privé* of Fælix, and Story's "Conflict of Laws."

The Public Lectures will be delivered in the Hall of the Middle Temple, on Tuesday in each week, at Two P.M.

The Private Classes will assemble at the Class-room, in Garden Court, on every Monday, Wednesday, and Friday, during the Educational Term, at half-past Nine A.M.

Common Law.

The Reader on Common Law proposes to deliver during the Educational Term, commencing the 1st Nov. 1853, Six Public Lectures of a general character, intended as introductory to those of the succeeding Terms. The Subjects to be treated of in this Six Lectures will be as under:—

I. On the advantages derivable from a study of the Law, and the mode in which that study should be pursued.

II. Law, how distinguished from Equity. The leading branches of our Common Law defined and characterized.

III. The Origin, History and Jurisdiction of each of the Three Superior Courts of Common Law.

IV. Of Legal Rights and Remedies generally.

V. Mode of Procedure in the Superior Courts.

VI. Jurisdiction of, and mode of Procedure in the County Courts.

With the Private Class the Reader on Common Law will consider in detail the subjects comprised in the three latter Lectures of the above Course. He will inquire into the nature of Legal Rights and Remedies, and into the respective Jurisdictions of the Superior and County Courts. The books to be used with the Private Class will be the following—Blackstone's (or Stephen's) *Comm.* vol. 1, Introduction, sects. 2 and 3. Vol. 3, book 5, chap. 7, and those portions of chap. 8 which concern purely Personal Rights and Actions. Smith's *Leading Cases*, and any recent Treatise on the Law and Practice of the County Courts.

The Lectures on Common Law during the ensuing Term will be delivered and the Private Classes will meet in the Hall of the Inner Temple as under:—

The Public Lecture on Monday in each week, at Two P.M.; the first Lecture to be delivered on Monday the 14th Nov.

The Private Class on Tuesday, Thursday, and Saturday in each week, from a quarter to Twelve to a quarter to Two o'clock.

By Order of the Council,

(Signed) RICHARD BETHELL,
Chairman.

Council Chamber, Lincoln's Inn,
October 22nd, 1853.

POINTS IN EQUITY PRACTICE.

MARRIED WOMAN.—NEXT FRIEND BECOMING RESIDENT ABROAD.—SECURITY FOR COSTS.

WHERE the next friend of the plaintiff (a married woman) had gone to America, and become a settled resident there, an order was made on motion for the next friend to give security for costs in the same manner as a plaintiff in such a case, or for the appointment of a new next friend—the proceedings in the meantime to be stayed. *Alcock v. Alcock*, 5 De Gex & S. 671.

TRUSTEE RELIEF ACT.—PETITION FOR PAYMENT OF FUNDS OUT OF COURT.—STATEMENTS IN.

The *Vice-Chancellor* Parker, in making an order for the payment of trust funds out of Court, said,—“It should be understood that in a petition presented under the Trustee Relief Act, all the statements of the affidavit made on payment of the fund into Court should be fully set out in the petition. The statement in the affidavit was the only declaration of trust under which the Court acted, and it was very inconvenient where such a statement was not upon the petition. *In re Levett's Trust*, 5 De Gex & S. 619.

POINTS IN COMMON LAW PRACTICE.

CHANGE OF VENUE.

AN order had been made on a summons before *Platt, B.*, at Chambers to change the venue in an action for demurrage from London to Devonshire, before issue joined, on the common affidavit that the cause of action arose in the county of Devon, and not in London, nor elsewhere out of the county of Devon. There was no affidavit in answer.

On the discharge of a rule to rescind this order, upon the ground that the venue could not be changed on the common affidavit since the Reg. Gen., Hil. T., 1853, rule 18, *Pollock, C. B.*, said,—“The general rule on this subject may be thus stated, and we may say that we believe it may be taken as the general opinion of all the Judges. The application for this purpose may be made either before or after issue joined, as may be most convenient to the parties in the proper conduct of the cause. If the application be made before issue joined, it is requisite that the party applying should

state in his affidavit all the circumstances on which he means to rely. He will not be allowed to add to or amend his case when cause is shown. It will be sufficient, however, for him to rely only on the fact, that the whole cause of action arose in the county to which he desires to change the venue; but if he does so, he may be answered by any affidavits negating this fact, or showing that the cause may be more conveniently tried in the county where the venue is laid. If made after issue joined, the affidavits, in support of the application, must show that the issues joined may be more conveniently tried in the county to which the party applying proposes to change the venue. Of course, these affidavits are open to an answer by the other party. In all these cases, the Court or Judge will decide, after hearing both sides, whether the venue is to remain or be changed as prayed, or be laid in some third county, according to its discretion.” *De Rothschild v. Shilston*, 8 Exch. R. 503.

ARTICLED CLERKS' QUERIES AND ANSWERS.

INTERVALS OF SERVICE.

AN articled clerk, who is compelled by ill health to reside in France, is desirous of cancelling his articles and obtaining the return of a portion of the premium. On his return to England, can he article himself for the remainder of the term unexpired only, and will not the present stamp be allowed him? K.

[If the attorney admits the fact of illness and consents to the absence, there is no occasion to cancel the articles. The clerk, when able to return, may complete the service.—Ed.]

I was articled to a gentleman in London, with whom I remained a year and a half, when I was ordered into the country on account of ill health, and remained away with his consent for 10 months. On my recovery I was assigned to another solicitor, and have remained with him about two years until his death. Must I enter into fresh articles for the rest of them? and can there be an assignment to the gentleman who succeeds to the practice of my former master? Will the time served since his death in assisting in arranging the affairs be reckoned? J.

[There should be a further contract to serve the residue of the term by assignment from the executors of the deceased attorney; but the interval between the death and the execution of the assignment cannot be reckoned. The Statute requires a service of five years *under contract*: service *not under contract* cannot be

deemed good service. We take it, that neither the Examiners nor the Judges can dispense with the positive requirement of the Statute.—Ed.]

I was articled four years ago, and then assigned to another attorney. Circumstances have arisen which render the second attorney incompetent longer to have an articled clerk. I propose, therefore, to be assigned to a solicitor in the country, and to act as his clerk for a short time, and then to pass part of the last year of my articles with his London agent. Is this practicable under the 6 & 7 Vict. c. 73, s. 6? C.

[If the full term of five years be thus served (not exceeding one year to the London agent), there can be no objection to the proposed mode of service. The intervals, if any, between the service to one attorney and the other must, of course, be made up.—Ed.]

SERVICE OUT OF JURISDICTION.

Can a person be legally articled, or serve part of his term, to an attorney of one of the Superior Courts at Westminster, residing in Ireland, Scotland, or one of the Channel Islands? G.

[We think not. The attorney must, during the term of clerkship, be a practitioner in England or Wales. Occasional absence in other parts of the empire will not, we presume, be objectionable.—Ed.]

SERVICE AT TWO PLACES OF BUSINESS.

I am articled to an attorney, who has two places of business: one at A. (where the larger portion is transacted), and another at a town about four miles distant. My services are required at both places—some days at the one and some days at the other. Will such a service be sufficient? J.

[If the attorney instructs and personally superintends the business at both places, we think the service will be sufficient; but, if the attorney should be generally at one town when the clerk is at the other, the service would be questionable. Thus, suppose the principal office was in London and the other at Greenwich, and that the clerk came only to London when the attorney was at Greenwich, so that in fact there was no personal superintendence or instruction, the service would not be satisfactory.—Ed.]

CONDITIONAL EXAMINATION BEFORE EXPIRATION OF TERM.

My articles will expire on the 3rd of February next. At the time they were executed I

had been two months in the office. Can I pass the examination in Hilary Term? D.

[The service in the office of the attorney before the actual execution of the articles cannot be reckoned. Where the articles expire in the Term, though after the day of examination, the candidate may be examined *de bene esse*, and on proving the completion of his service in the Term, the examiners' certificate, if he pass, will be issued, dated of course subsequently to the expiration of his articles. The examiners' certificate bears date in the Term; but if the articles have not expired, they cannot certify that he is fit and capable (according to the Statute) to act as an attorney.—Ed.]

PRACTICE IN THE COUNTY COURTS.

HEARING ATTORNEYS' CLERKS.

To the Editor of the Legal Observer.

SIR,—The inconvenience experienced by the Profession generally, is, I believe, pretty well felt through the County Court Judges, in many instances, refusing to hear an attorney's clerk. I had occasion to attend the Brompton County Court, and on my rising when the case was called on to advocate the cause, the Judge asked me whether I was an attorney; of course I stated I was not; he then told me that I could not conduct the case; but having no one in attendance to whom I could give instructions, I was about to examine my witness, and was told to stand down. I contended as long as I could, but to no purpose; and had the defendant been present, I should have been nonsuited. I would suggest that a law ought to pass to make it compulsory on the part of the Judges to allow a competent clerk to attend and to be paid the usual fee.

"BASINGHALL STREET."

[We question the expediency of this suggestion. How is the Judge to ascertain the *bond fide* employment of many thousand attorneys' clerks?—Ed.]

LAW REFORM COMMISSIONS.

WE enumerated last week no less than seven Commissions for inquiring into and reporting on proposed amendments or alterations in the Law in almost every department, viz. :—

Real Property.	County Courts.
Courts of Equity.	Divorce.
Courts of Common Law.	Partnership.
Courts of Bankruptcy.	Consolidation of
Ecclesiastical Courts.	the Statutes.

Besides the reference to a Select Committee of the House of Commons on the Law of Partnership, it seems there is now a Royal Commission appointed, to report to her Majesty "whether it will be expedient that any and what alteration shall be made in the Law of Partnership, so far as relates to the *limited or unlimited liability of Partners.*"

We are informed that the names of the Commissioners are,—

Sir T. B. C. Smith, Master of the Rolls, Ireland.

Mr. Justice Cresswell.

Lord Carriskill, one of the Judges in Scotland.

G. W. W. Bramwell, Esq., Q. C.

James Anderson, Esq., Q. C.

Kirkman D. Hodgson, Esq., of the firm of Messrs. Finley, Hodgson, & Co. (St. Helen's Place).

Robert Slater, Esq., of the firm of Messrs.

Morrison, Allen, & Co. (Fore St.)

Thomas Bazley, Esq., Manchester.

TAKING OUT AND RENEWAL OF CERTIFICATES.

Queen's Bench.

For the 26th day of November, 1853.

Allen, Charles, 27, Kensington Gate, Hyde Park; and Henrietta Terrace.

Allen, George, 9, Cavendish Road, St. John's Wood; and Carlisle Street.

Barrell, William, 14, Robert Street, Upper Brook Street, Manchester.

Bartley, Nehemiah, 3, Burnham Square, Victoria Park; and West Street.

Barton, George Henry, 2, Bloomfield Place, Pimlico.

Beck, John Grant, 15, Upper George Street, Bryanston Square; Pulborough.

Bewsher, John, 17, Argyle Square, New Road.

Billar, George, 12, St. Petersburg Place, Bayswater; and Onslow Terrace.

Blandy, William, F., 4, Duke Street, Westminster, Belgrave Street; Reading.

Boulton, Robert, 24, Argyle Sq., New Road.

Briggs, Frederick, 4, Norfolk Place, Globe Road, Mile End.

Brown, William, 63, Charrington Street, Oakley Square; and Warwick.

Chandler, Charles, 21, Cambridge Terrace, Edgware Road; Cecil Street, Upper Seymour Street, Shrewsbury; and Ellesmere.

Charlton, Edward, Gateshead.

Chester, Matthew, Liverpool.

Clunn, A. J., 1, Little Piazza, Covent Garden; and Christleton Road, near Chester.

Codd, Henry, 17, Lincoln's Inn Fields; and Maldon.

Collyer, A. A., 3, Fig Tree Court, Temple; and Lincoln's Inn Fields.

Faithfull, George Lockton, Tring; and Northampton.

Foley, William Walter, 10, Porto Bello Road, Notting-hill.

Garnham, Richard Enoch, 13, Glo'ster Gardens, Kentish Town.

Garrard, George Henry, 10, Argyle Square, King's Cross; and Salford.

Gillow, John, Little Ormond Street, Queen Square, St. Nicholas; and Northwich.

Goldicutt, John, A., 6, Bulstrode Street, Cavendish Square; and Dunstable.

Goodger, Henry, Burton-on-Trent.

Hanbury, Thomas James, 26, Maismore Square, Park Road.

Hawkyard, George, Southport; and Ashton-under-Lyne.

Hindmarsh, Henry Edward, 15, Tibberton Square; and Cripplegate.

Hockin, Thomas Burd, Dartmouth.

Holmes, Samuel Bettison, Newcastle,

Howarth, John, jun., of Pendleton.

Ings, T. Godden, 52, St. Andrew's Road, Newington; and Buckingham Street.

King, G. F., 3, Manner Villas, Upper Holloway; Croydon; Lothbury.

Livett, Andrew Lewis, Manchester.

Lyddon, Richard, Camberwell; and Wellington.

March, Owen, Rochdale.

Mares, Charles, 5, Billiter Street.

Morris, John, 12, Royal Place, Greenwich.

Mounsey, Ewart Simon, 14, Wharton Street, Pentonville.

Munday, Richard Hodges, 5, Fountain Court, Strand.

Parker, Thomas, 12, Angel Terrace, Islington; and Southampton Row.

Pott, Joseph Compton, Bridge Street, Southwark.

Pulsford, William, Nicholas Lane; and Highbridge, near Bridgewater.

Roberson, Charles James Scholey, 6, North Street, Fitzroy Square.

Robinson, Henry Meggison, 16, Finsbury Place South.

Shugar, George, Brighton.

Sidney, William Henry Marlow; Cowpen, Northumberland.

Spofforth, Markham, 3, Bennet Street, St. James's; and Cannon Row.

Tatham, Michael Hodgson, Highgate.

Taylor, Robert, 4, Vere Street, Oxford St.; and Sarbiton, near Kingston.

Taylor, John, Crowland.

Tooth, R., 6, Duke Street, Westminster; Buckingham Street; and Tillington.

Watson, Charles, Castleton, near Guisborough.

Wells, Thomas, 73, Upper Ground Street, Blackfriar's Road; Hill Street; St. Alban's Street; Greville Street; and Chapel Street.

Williams, Matthew Haywood, 69, A., Dean Street, Soho; Bridgnorth.

Willington, John Stark, Southsea.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

In re Burbury, ex parte Bateman. Nov. 4, 1853.

TAXATION OF COSTS BY DISTRICT REGISTRAR IN BANKRUPTCY. — REVIEWAL BY COMMISSIONER.—JURISDICTION.

Held, on appeal from Mr. Commissioner Balguy, that the Commissioner has jurisdiction to, and should, review, as a matter of course, the taxation by the Registrar of costs in the matter of a bankruptcy.

Quære, whether the Registrar of a district Court has jurisdiction to tax costs in a bankruptcy before the Order of October, 1852, but after the passing of the 12 & 13 Vict. c. 106.

THIS was an appeal from the decision of Mr. Commissioner Balguy, refusing to review the taxation, in the year 1851, of certain bills of costs for business transacted in the matter of this bankruptcy. It appeared that the bill had not been paid, but a sum of 100*l.* had been paid on account.

W. M. James and W. Morris in support, citing *Esparte Moore*, 1 Deac. 578; *Esparte Rees*, De Gex, 205; *Esparte Woolston*, 3 Mont., Deac. & De G. 702.

Holt and Selwyn, *contrà*.

The Lords Justices said, the solicitors were in a condition to establish their claim, although the taxation had taken place more than a year ago by the registrar of the district Court, and after the 12 & 13 Vict. c. 106, came into force, but before the Order of 19th October, 1852.¹ It was very doubtful, under the circumstances, whether the registrar had authority to tax, but, at all events, as he had professed to do it in the ordinary exercise of his jurisdiction, his taxation should have been reviewed by the Commissioner as a matter of course. The order of the Commissioner would therefore be discharged, and the matter be referred back to the Court below, with liberty to apply.

Gossett v. Vivian. Nov. 5, 1853.

PAYMENT TO TENANT FOR LIFE OUT OF MONEY PAID FOR LANDS TAKEN BY RAILWAY.—COMPENSATION FOR INCONVENIENCE.—LANDS' CLAUSES' ACT, s. 73.

*Order made on petition for payment under the 6 Vict. c. 18, s. 73, to a tenant for life of lands taken by a railway company, of a sum of 3,000*l.* by way of compensation for the annoyance caused by the line passing near his residence, where the original purchase-money agreed on had, by reason of the same, been increased from 9,000*l.* to 20,000*l.**

¹ The 52nd Order of which provides, that "in the country districts all bills of costs, charges, fees, and disbursements: (except such as may be specially referred to the Master), shall be taxed by one of the registrars."

THIS was a petition on behalf of the tenant for life of certain settled estates in Cornwall, for payment of a sum of 3,000*l.*, part of 20,000*l.*, which had been paid by the Truro and Bodmin Railway Company for land required for their line, and for residential damage. This payment was sought by way of compensation for the annoyance caused to the petitioner from the railway being carried through his park and near to one of the principal windows of the mansion-house which he occupied. It appeared that, by the original contract, the purchase-money was fixed at 9,000*l.*, with a further sum on certain contingencies, and the railway was to be made so as to avoid the petitioner's residence. The Master of the Rolls having refused the petition, this appeal was presented.

Roupell and Speed in support, citing 8 Vict. c. 18, s. 73, which provides, that "it shall be in the discretion of the Court of Chancery in England" "to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank," "as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works."

J. W. De L. Giffard for the trustees, *contrà*, on behalf of the infant children.

The Lords Justices said, that, having regard to the great increase in price by reason of the line passing through the park, and to the inconvenience consequently occasioned to the petitioner thereby, it was not unreasonable the payment asked for should be made.

Master of the Rolls.

In re Philpots. Nov. 4, 1853.

TAXATION OF BILL OF COSTS. — ON PETITION OF MORTGAGOR. — PRESSURE BY MORTGAGEE'S SOLICITOR.

A mortgagee's solicitor had refused to give up the mortgage on the amount thereby secured being tendered, without payment of his costs: Held, that the mortgagor was entitled to the usual order for a taxation.

THIS was a petition on behalf of the mortgagor of certain property for an order for the taxation of the bill of costs, in reference to the transaction, of the mortgagee's solicitor, who had refused to give up the mortgage-deed on its amount being tendered, without payment of his costs.

Kingdon, *contrà*.

The Master of the Rolls said, that as the refusal of the solicitor to complete amounted to undue pressure, the usual order must be made for the taxation.

Walker v. Drury. Nov. 5, 1853.**MARRIED WOMAN.—EQUITY TO A SETTLEMENT.**

A married woman was entitled to a sum of 400l. on the death of a tenant for life, and her husband had conveyed her interest to secure a debt. On its falling in, an order was made for 300l. to be settled on the wife and her children, and for payment of the residue after the deduction of costs to the mortgagee.

It appeared that the testator, Mr. Samuel Drury, had charged certain lands with two sums of 400l. in favour of his two daughters after his wife's decease, and that Ann, one of the daughters, had married, and her husband had conveyed away her interest by way of security for a debt. On the death of the tenant for life, the daughter became entitled to her bequest, and claimed her equity to a settlement.

Roupell, R. Palmer, Metcalfe, Martindale, Roxburgh, and Ainslie for the several parties.

The Master of the Rolls said, that a sum of 300l. must be settled on the wife and children, and the remainder be paid, after payment of the costs, to the mortgagees.

Vice-Chancellor Kindersley.*In re Bishop of Bath and Wells.* Nov. 4, 1853.**PURCHASE OF LAND BELONGING TO SEE.—WHERE BISHOP REVERSIONER.—ACCUMULATION OF DIVIDENDS.**

Certain lands belonging to a See were purchased under the Lunatic Asylums' Regulation Act: Held, that the bishop, who was only entitled to the reversion, was not entitled to the dividends, although the sum was small, but they were directed to be invested and accumulate.

THIS was a petition for the payment to the petitioner and his successors of the dividends on a sum of about 100l., the purchase-money of certain lands belonging to the See, and in which the petitioner was entitled to the reversion, taken under the 16 & 17 Vict. c. 97, s. 36 (the Lunatic Asylums' Regulation Act).

Thring in support, and referring to *Ex parte Bishop of Winchester*, 16 Jur. 649.

Nalder for the visitors.

The Vice-Chancellor said, that as the petitioner was a simple reversioner, the dividends, although the sum was small, must accumulate and be invested.

In re Buckinghamshire Railway Company, ex parte New College, Oxford. Nov. 4, 1853.

RAILWAY COMPANY.—INVESTMENT OF PURCHASE-MONEY OF LAND TAKEN.—BROKERAGE.—COSTS.

On a petition for the investment of the purchase-money of land taken by a railway company, direction for payment by the company of the brokerage in addition to the ordinary costs.

THIS was a petition for the investment of the purchase-money of certain lands belonging

to the petitioners, which had been taken for the purposes of the above railway under their act.

Jones Bateman, in support, asked for a direction in the order for payment by the company of the brokerage in addition to the ordinary costs, citing *In re Kendal and Windermere Railway Company's Act*, 1845, and *Braithwaite's Trust*, 1 Eq. Rep. 163.

Speed for the company.

The Vice-Chancellor made the order as asked.

Bennett v. Powell. Nov. 7, 1853.**MOTION FOR DECREE.—COUNTY COURT JUDGMENT.—DECLARATION OF CHARGE ON ANNUITY.**

Quere, whether this Court has jurisdiction to declare that the amount of debt and costs under a judgment in a County Court, together with interest at 4 per cent., shall be a charge on an annuity payable to the defendant, who had no goods or chattels in this country on which the execution could operate under the 9 & 10 Vict. c. 95, s. 94. But the Court refused, on motion for decree, under the 15 & 16 Vict. c. 86, s. 15, to make such a declaration.

It appeared that an action had been brought in the Shoreditch County Court by the master of a vessel, to recover the amount of passage money for the defendant and his wife from Adelaide to this country, and that he had obtained judgment. There were, however, no goods or chattels on which the execution could operate, and this motion was thereupon made for a decree, under the 15 & 16 Vict. c. 86, s. 15, that the amount of the judgment and costs, with interest at 4 per cent. might be declared, a charge on an annuity of 25l. payable to the defendant under his father's will, and secured on leasehold property.

By the 9 & 10 Vict. c. 95, s. 94, it is enacted, that "whenever the Judge shall have made an order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made."

Bovill and *W. D. Bruce* in support, citing *Smithier v. Lewis*, 1 Vern. 398; *W. Morris*, contra, referred to *Smith v. Hurst*, 22 Law J., N. S., Ch. 289; *Humphry* for the trustees.

The Vice-Chancellor said, that as the question was entirely new, and brought on by motion, no order would be made thereon, in the exercise of the discretion conferred by s. 16, but the costs be reserved until the hearing.

Vice-Chancellor Stuart.*Hatwill and wife v. Runell.* Nov. 4, 1853.**ADMINISTRATION SUIT.—RIGHT OF EXECUTOR TO SPECIAL INQUIRIES IN RESPECT OF SERVICES RENDERED TO HIM IN INDIVIDUAL CAPACITY.**

It appeared in a suit for the administration

of a testator's estate against the executor, that the plaintiff had lived with the executor and assisted him in carrying on his business, and received her board but no remuneration for her services. A decree was made for the usual accounts, but a direction was refused for special inquiries as to the board and services.

THIS was a suit for the administration of a testator's estate against the executor, and for the usual accounts. It appeared that the plaintiff had lived with her brother, the defendant, and assisted him in carrying on his business, for which she had received no remuneration, but was boarded. The defendant claimed to have the inquiries extended both to the board and services.

De Ger, for the plaintiffs, urged it was not competent to the defendant to set-off any claim due to him in his own character, as he was sued as executor, citing *Freeman v. Lomas*, 9 Hare, 109.

R. W. E. Forster for the defendant.

The *Vice-Chancellor* said, that the usual decree for an account could only be directed, without any of special inquiries.

In re Robinson's Trust, ex parte Wiffen. Nov. 7, 1853.

PAYMENT OF FUND OUT OF COURT TO ASSIGNEE. — REPRESENTATIVE OF ASSIGNOR.

Order on petition for payment of funds to the assignee of the party entitled thereto, on the death of the tenant for life, notwithstanding the assignor's representative was not before the Court.

THIS was a petition on behalf of the assignee of a fund, which was payable on the death of a tenant for life, for payment out of Court. The assignor died in 1847, and the tenant for life in 1853. The representative of the assignor was not before the Court.

Steere and Roche for the respective parties.

The *Vice-Chancellor* made the order as prayed.

In re Perk's Estate and the South Staffordshire Railway Company. Nov. 7, 1853.

RAILWAY COMPANY.—PURCHASE OF LAND. PAYMENT OF DIVIDENDS TO TENANT FOR LIFE.—COSTS.

A railway company took certain freehold and copyhold land under the 8 Vict. c. 18, s. 85, and it appeared that the tenant for life could show a good title to the freehold and to one undivided moiety of the copyhold—the owner of the legal estate to the other moiety being in America: Held, on petition, that the dividends on the purchase-money of such part as a good title was shown to were payable to the tenant for life,—the costs of the petition to be paid by the railway company.

It appeared that the above railway company had taken possession of certain land near Walsall, Staffordshire, under the 8 Vict. c. 18, s. 85, for the purposes of their railway, and that the petitioner was tenant for life. Part of the property was freehold and part copyhold, and as to the former a good title could be made out, but the petitioner only possessed an undivided moiety in the latter—the holder of the legal estate in the other moiety being resident in New York, United States. This petition was thereupon presented for payment of the dividends in respect of the purchase-money of the land to which a good title could be made out.

Bacon and Cole in support; *Follett and Kinglake* for the company, contra.

The *Vice-Chancellor* said, that as the company held the property under legislative powers which made it impossible to rescind the contract, which would be done if between an ordinary vendor and purchaser, the petitioner was entitled to the interest of so much of the fund as represented the land to which he could make a good title—the costs to be paid by the company.

Vice-Chancellor Wood.

Patching v. Dubbins. Nov. 3, 4, 1853.

COVENANT AGAINST ERECTION OF BUILDING OPPOSITE PLAINTIFF'S HOUSE. — CONSTRUCTION.—INJUNCTION.—COSTS.

The defendant had covenanted, on the purchase by the plaintiff of a house, that no building whatever, except monuments and tombs, should be erected at any time on any part of certain lands belonging to him, and used as a burying ground, "opposite" the plaintiff's house: Held, that the covenant must be construed strictly, and an injunction was refused, with costs, to restrain the erection of a building on the land which was not exactly opposite the plaintiff's house.

THIS was a bill for an injunction to restrain the defendant from erecting a building on certain land in breach of his covenant. It appeared that the ground in question was used as a burying ground to the Hanover Chapel, Brighton, and that, on the plaintiff's purchasing his present house in Windsor Terrace, the defendant had covenanted that no building whatever, except monuments and tombs, should at any time be erected on any part of the land belonging to him lying on the east side of the said terrace and "opposite" to the plaintiff's house.

Rolt and Marett for the plaintiff; *Bacon and W. Hislop Clarke* for the defendant.

Our. ad. vult.

The *Vice-Chancellor* said, that the question must be decided on the actual words contained in the covenant, the phraseology of which was by no means clear. The word "opposite" must be taken in its rigorous and restricted sense, and as the building was not exactly

opposite the plaintiff's house, the bill must be dismissed, and with costs, as being a pure question on the construction of the covenant.

In re Town Lands of East Bergholt, Suffolk.
Nov. 5, 1853.

CHARITY.—APPOINTMENT OF NEW TRUSTEES.—VESTING ESTATE IN COMMISSIONERS UNDER 16 & 17 VICT. C. 127.—PRACTICE.

On the petition of two out of three surviving trustees under the 52 Geo. 3, c. 101, and the 13 & 14 Vict. c. 60, an order was made approving of 10 new trustees nominated by the vestry of the parish, on counsel mentioning their names, and stating one was the incumbent, another an eminent surgeon, and others considerable landowners; and the costs were directed to be paid by the trustees out of moneys coming to their hands as between solicitor and client.

The Court refused to send the matter to the Commissioners under the 16 & 17 Vict. c. 127, s. 16, where the petitioners refused to consent.

The future appointment of new trustees was directed to be made by summons at Chambers by the remaining trustees, on their number being reduced to five, after notice to the Attorney-General.

THIS was a petition under Sir S. Romilly's Act, 52 Geo. 3, c. 101, and the Trustee Act, 1850, 13 & 14 Vict. c. 60, on behalf of two trustees, for the appointment of 10 new trustees to a charity for the good and benefit of the poor of the above town. It appeared that the original trust deed was lost, but that it had been the practice since 1783 to elect the new trustees from among the chief inhabitants whenever the original number of 13 trustees was reduced to 4 or 5. All the trustees appointed under a deed in 1816 were now dead, with the exception of the two petitioners, and the treasurer, who declined to join in this petition. The proposed new trustees, among whom were the rector, the surgeon, and considerable landowners, had been elected at a vestry.

Fooks in support; Giffard, for the treasurer, suggested that steps should be taken under the 16 & 17 Vict. c. 127, s. 16, to vest the legal estate in the Charity Commissioners.

Wickens for the Attorney-General.

The Vice-Chancellor said, that the matter could not be sent to the Commissioners unless by consent, and on counsel mentioning the names, and stating that one was the incumbent, another an eminent surgeon, and others considerable landowners, the new trustees were approved, and the costs were directed to be paid by the trustees out of moneys coming to their hands, as between solicitor and client. In future, when their number was reduced to 5, the remaining trustees must apply at Chambers, after notice to the Attorney-General, for the appointment of new trustees.

Carter v. Hind. Nov. 7, 1853.

INSOLVENT.—SETTING ASIDE DEED OF SETTLEMENT AS IN FRAUD OF CREDITORS.—CONSIDERATION.

A married woman had mortgaged certain of her property for 2,300*l.*, which she understood to be the amount of her husband's debts on the arrangement, according to the advice of a solicitor and of her family, for a settlement by the husband of his real and personal estate, in trust to herself to her separate use for life, with remainder to her children in default of appointment. Six years afterwards, the husband took the benefit of the Insolvent Debtors' Act. A bill by the assignee to set aside the deed as fraudulent was dismissed, with costs, as against the wife and children, but without costs as against the husband.

THIS bill was filed by the assignee of a Mr. Hutchinson, who had been declared an insolvent, to set aside as fraudulent a deed of trust dated in 1845, whereby his real and personal estate, together with the furniture and effects in his dwelling-house, were settled in trust for his wife for her separate use for life, and at her death as she should appoint, and in default thereof for the children. It appeared that on being served with a notice in bankruptcy in 1845, the defendant applied to his solicitor in reference to a mortgage of an estate to which he was entitled in right of his wife, and upon his agreeing to make a settlement for the benefit of herself and her children, she executed, under the advice of the solicitor, a mortgage to secure 2,300*l.* which was stated by the defendant to the total amount of his debts. The defendant became insolvent in 1851.

Rolt and Bates for the plaintiff; Glasse and Bichner for the wife and children; Scarlett for the husband; Daniel and Karlake for the trustees.

The Vice-Chancellor said, there was no secrecy in the matter, and the settlement was taken on the advice of a solicitor and of the wife's own family, as an equivalent for the mortgage on her estate. It could not be said, having regard to the amount of the mortgage-money, that the consideration for the settlement was a trifling one, and the fact that the wife was ignorant of there being any debts beyond those secured, showed it was not an attempt to defraud creditors. The bill would therefore be dismissed, with costs, as against her and her children and the trustees, but without costs as to the husband.

Court of Queen's Bench.

Walker v. York and North Midland Railway Company. Nov. 4, 1853.

RAILWAY COMPANY.—CARRIERS' ACT.—SPECIAL CONTRACT.—LOSS OCCASIONED BY DELAY.

A railway company had given the plaintiff notice of their only carrying fish on the condition they should not be liable for loss

or delay, and it appeared the plaintiff afterwards delivered a quantity of fish for conveyance: Held, that this constituted a special contract, and that the defendants were not liable under the 11 Geo. 4, and 1 Wm. 4, c. 68, in an action for neglecting to carry the fish in time for the markets.

THIS was a rule nisi to set aside the verdict for the defendants, and for a new trial of this action, which was brought against the defendants as carriers, for neglecting to carry a quantity of fish belonging to the plaintiff from Scarborough to Manchester and London in time for the markets. The defendants set up as an answer to the action, that they had given the plaintiff notice of their only carrying fish on the condition they should not be liable for loss or delay, and on the trial before Coleridge, J., it appeared this notice had been served on the plaintiff before the delivery of the goods in question.

Watson, Q. C., and Addison showed cause; M. Chambers, Q. C., and Cowling in support.

The Court said, that the Carriers' Act (11 Geo. 4, and 1 Wm. 4, c. 68), did not operate to prevent a common carrier from entering into a special contract to limit his Common Law liability, but only provided by s. 4, that the liability should not be limited merely by such notice or declaration. It appeared the notice was served on the plaintiff, and that the goods were afterwards delivered, and the jury were therefore justified in concluding there was a special contract, and the rule must be discharged.

Guardians of Stokesleigh Union v. Stoddart.
Nov. 5, 1853.

PRINCIPAL AND SURETY.—OMISSION TO STATE MATERIAL CIRCUMSTANCE.—CONCEALMENT.

Held, that the mere omission of the union clerk to inform the defendant, who was about to become surety for their relieving officer, of the fact that his principal was at the time indebted to the union in a sum of 106l., did not amount to the concealment of a material circumstance so as to invalidate the bond—no inquiries having been made by the defendant in reference thereto.

THIS was an action on a bond given by the defendant as surety for a person who had been appointed relieving officer in the parish of Stokesleigh by the plaintiffs, and conditioned for delivery up of all books and papers, and accounting for and payment over of all moneys belonging to the union, on his resignation or removal from office. It appeared that on his removal a sum of money was due which he had not paid over, whereupon this action was brought, to which the defendant pleaded (*inter alia*), that when the bond was given the fact was suppressed, that a sum of 106l. was due from his principal. On the trial before Erle, J., at the last Liverpool Assizes, it appeared that the fact alleged in the plea was true, but the jury were directed that the circumstance

did not vitiate the bond, and the plaintiffs obtained a verdict.

Knowles in support of the motion, citing *Railton v. Mathews*, 10 C. & F. 934.

The Court said, there was no evidence that the principal was a defaulter, although a debtor to the union at the time the bond was executed, and the clerk of the union was not bound spontaneously to give the information in question, and the omission was not therefore the concealment of a material fact as would relieve the surety. The rule would accordingly be refused.

Ellis v. Sheffield Gas Consumers' Company.
Nov. 7, 1853.

ACTION FOR INJURIES.—LIABILITY OF GAS COMPANY AND NOT CONTRACTOR, — WHERE ACT UNLAWFUL.

A gas company employed a contractor to lay down pipes, and he took up the road for the purpose, although without being empowered by Act of Parliament or charter. The plaintiff received injury from a heap of rubbish left on the road: Held, that the company were liable, and not the contractor, as the unlawful act was done by their direction.

THIS was an action to recover damages for injuries sustained by the plaintiff through the negligence of the defendants' servant and agent. On the trial before Wightman, J., at the last York Assizes, it appeared they had employed a contractor to lay down certain gas pipes, and that a heap of rubbish had been left on the road, which caused the injury. The plaintiff having obtained a verdict, this motion was made for a rule nisi to set it aside, and enter judgment for the defendants *non obstante verdicto*.

T. Jones in support, on the ground the action should have been brought against the contractor, as he had no authority either by charter or Act of Parliament to take up the road.

The Court said, that as the defendants had employed the contractor to do what was unlawful and which was the cause of the injuries complained of, they were liable, and the rule was refused.

Stevens v. Lee. Nov. 7, 1853.

AUCTIONEER.—SALE.—FRAUDULENT REPRESENTATIONS.—RESCINDING CONTRACT.

The plaintiff had instructed the defendant, an auctioneer, to sell a horse, but on the representations made proving untrue, the purchaser rescinded the contract, and claimed the return of the cheque handed to the defendant: Held, that the plaintiff could not recover its amount from the defendant as money paid to his use, and a rule was refused to set aside the verdict for the defendant.

THIS was a motion for a rule nisi to set aside the verdict for the defendant, and to enter

judgment for the plaintiff *non obstante veredicto*. It appeared that the defendant, an auctioneer at Bristol, had been instructed to sell a horse belonging to the plaintiff, without warranty, but with representations that the horse came from the country, its owner having no further use for it, that it was a useful horse and had been worked in harness to the present time. The defendant sold the horse for 17l. 10s. 6d., and received the amount by cheque. These representations, however, proved to be untrue, and the purchaser gave the defendant notice not to hand over the cheque to the plaintiff, as he rescinded the contract, whereupon this action was brought. The defendant justified, on the ground of the representations being false, setting out the above facts, and on the trial before *Talfourd, J.*, at the last Bristol Assizes, he obtained a verdict.

Kinglake, S. L., in support.

The Court said, if the defendant had paid over the cheque to the plaintiff after receiving notice from the purchaser, he would have been liable to an action at the suit of the latter, as the money then became money had and received to his use, and not to the plaintiff's use. The case of *Murray v. Mann*, 2 Exch. R. 538, was in point, and the rule must be refused.

Court of Common Pleas.

General Steam Navigation Company v. Mann.
Nov. 4, 1853.

VESSEL.—COLLISION.—NEGLIGENCE IN COMPLYING WITH REGULATIONS UNDER NAVIGATION ACT.

On the trial of an action for damages sustained by a vessel from the defendant's negligence, it appeared the plaintiffs had, on seeing the other vessel, ported their helm, in compliance with the regulations under the 14 & 15 Vict. c. 79, but that the defendant had kept on his course for several minutes before also porting his helm, but not in time to avoid a collision : Held, that the plaintiffs were entitled to recover, although their vessel was only within a short distance of the other when the helm was ported.

THIS was an action to recover damages from the defendant, for having so negligently managed his vessel, the *Maria*, as to cause a collision with the plaintiffs' steam-vessel, the *Clarence*. It appeared that the plaintiffs' ship was proceeding from Scotland to London, and met the defendant's, and that their captain had, upon seeing her, which, however, was not until within a short distance, immediately ported his helm, in accordance with the regulations under the Navigation Act, 14 & 15 Vict. c. 79. The captain of the defendant's vessel kept on her course for several minutes, when she also ported her helm, but too late to prevent a collision. On the trial before *Pollock, L. C. B.*, the plaintiffs obtained a verdict, and this motion was now made for a rule *nisi* to set it aside and for a new trial, on the ground of misdirection, that the plaintiffs' captain was right in obeying

the regulations at whatever distance the vessels might be from each other.

M. Chambers, Q. C., in support.

The Court said, there was no misdirection, and refused the rule.

Edwards v. Habbill. Nov. 4, 1853.

VESSEL.—POWER OF MASTER TO PLEDGE CREDIT OF OWNER FOR NECESSARIES WHILE WIND-BOUND.

The master of a river trading vessel had, while wind-bound at Newport, borrowed a sum of 5l. to supply his ship with provisions. The owner lived at Exeter : Held, that the owner was nevertheless liable in an action to recover the amount lent, although the master might, in the due course of post, which was two days, have received an answer to a communication.

Karslake moved pursuant to leave for a rule *nisi* to set aside the verdict for the plaintiff and enter it for the defendant in this action, which was brought by a broker at Newport to recover from the owner of a river trading vessel who lived at Exeter, the sum of 5l. which the master of his vessel had borrowed for provisions on being wind-bound at Newport. The learned counsel urged the master had no authority to pledge his owner's credit, as he could in course of post have communicated with him and received an answer in two days, and citing *Beldon v. Campbell*, 6 Exch. R. 886; *Macintosh v. Mitcheson*, 4 Exch. R. 175; *Robinson v. Lyall*, 7 Price, 592.

The Court said, the simple question was, whether the master could have obtained on credit the provisions which it was his duty to supply his vessel while wind-bound, and it had been disposed of by the defendant's counsel not cross-examining the master on his proving he had expended the sum in question, as to whether he could have obtained them on credit, and the rule would therefore be refused.

Apps v. Day. Nov. 5, 1853.

ACTION FOR ASSAULT AND FALSE IMPRISONMENT.—NOMINAL DAMAGES.—NEW TRIAL.—JUSTIFICATION.

In an action for an assault and false imprisonment, a rule was refused for a new trial, on the ground of nominal damages having only been given, where the defendant had good reason to suspect the plaintiff of having committed the offence for which he was given in custody.

Horn moved for a rule *nisi* for a new trial, on the ground the damages were insufficient in this action for assault and false imprisonment. It appeared that the plaintiff had bought a ferret in April last, and that the defendant having previously lost his, accused the plaintiff of having stolen it. The stolen ferret was afterwards produced by another person, but it appeared also that the plaintiff, when applied to, had endeavoured to conceal the one he had purchased. On the trial before *Cresswell, J.*, at the last As-

sizes for Maidstone, the jury were of opinion the defendant had reasonable grounds for suspecting the plaintiff of having stolen his ferret, and returned a verdict with nominal damages of one farthing.

The Court said the rule must be refused.

Berry v. Alderman. Nov. 5, 1853.

BILL OF EXCHANGE.—INDORSEE AGAINST ACCEPTOR.—NO CONSIDERATION TO DRAWER.—FRAUD.—EVIDENCE.

The acceptor pleaded to an action on a bill of exchange brought by indorsee, that the drawer had never received any consideration for the same, having handed the note to E. to be discounted, that E. fraudulently delivered it to a person unknown, of whom H. received it without consideration, who indorsed to the plaintiff without consideration: Held, that as the plaintiff failed at the trial to prove he had given good consideration, he was not entitled to recover.

In this action on a bill of exchange for 30l. by the indorsee against acceptor, the defendant pleaded that the drawer had never received any consideration for it, but had delivered it in blank to one Edwards to get discounted and give him the money, but that Edwards had fraudulently delivered it to a person unknown, of whom one Halliday received it without consideration, who indorsed to the plaintiff also without consideration. On the trial before *Talfourd, J.*, at the last Middlesex Sittings, the defendant obtained a verdict, subject to leave reserved, whereupon this motion was made to set aside the verdict and for a new trial, or to enter it for the plaintiff.

M. Chambers and *Collier* in support.

The Court said, the defendant had proved on the trial the bill was obtained by fraud, and the plaintiff had failed to prove he had given good consideration for it, and the rule must therefore be refused.

Cooper v. Parker. Nov. 5, 1853.

ACTION BY ATTORNEY.—SPECIAL PLEA OF ACCORD AND SATISFACTION.—QUESTION FOR JURY.

To an action brought by an attorney, the defendant pleaded a special plea, that the plaintiff having brought an action in the County Court, and the defendant having given notice of his intention to rely on the defence of infancy, it had been agreed that the plaintiff should accept 30l. and his costs in satisfaction of all causes of action which he then had against the defendant, and that such payment had been made. The jury having found that the agreement was not confined to the County Court action, but to all other causes of action pending between the parties, the Court refused to disturb the verdict for the defendant.

THIS was a motion for a rule nisi to set aside the verdict for the defendant, on the ground of misdirection or to enter judgment for the plain-

tiff *non obstante veredicto*. It appeared that the action was brought to recover the amount of the bill of costs for work done by the plaintiff as an attorney, money lent, money paid, and on an account stated, and that the defendant pleaded thereto the Statute of Limitations and infancy, with a special plea, that the plaintiff having brought an action in the County Court, and the defendant having given notice of his intention to defend on the plea of infancy, it had been agreed before the trial that the plaintiff should accept 30l. and his costs in full satisfaction of all causes of action which he then had against the defendant, and that the defendant had paid the said sum in acquittance and satisfaction of all claims against him. On the trial before *Lord Campbell, C. J.*, at the last Chester Assizes, it was left to the jury to say whether this agreement had relation only to the County Court action, or to all causes of action between the parties, and on their finding the latter to be the case, the defendant obtained a verdict.

Miller, S. L. and *M'Intyre* in support, on the ground the defendant was not an infant when the agreement was entered into, and that it should have been left to the jury to say whether or not at that time the defendant was an infant. They cited *Cumber v. Wane*, 2 Smith's Lead. Ca. 146, *notis*.

The Court said, the averment of infancy at the time of the accruing of the first cause of action was not material and that there was no misdirection, and refused the rule accordingly.

Clark v. Schwartz. Nov. 5, 1853.

CONTRACT FOR PURCHASE OF GUANO.—TIME OF ANALYSIS.—BREACH.

The plaintiff agreed to purchase 300 tons of guano on the arrival of a cargo, upon the defendant's contracting it should be equal in quality and analysis to a former cargo. It appeared an analysis had been made of this cargo in the previous June, but that the quality of guano became deteriorated by the evaporation of its ammonia: Held, that the plaintiff was entitled to require the guano contracted for to be equal in analysis to that made in June, and not to a future one to be made of the two cargoes.

Watson, Q. C., appeared in support of this motion, for a rule nisi to set aside the verdict for the plaintiff and for a new trial, on the ground of misdirection. It appeared that the plaintiff had applied in June, 1852, respecting a portion of a cargo of guano, then lying in a warehouse, and which had been analysed, and that in the November following, he contracted to buy 300 tons of guano on the arrival of another cargo, upon the defendant's contracting it should be equal in quality and analysis to the former cargo. It also appeared that the quality of guano becomes deteriorated by the evaporation of its ammonia. The guano delivered proved to be of an inferior description, whereupon this action was brought. On the trial at Guildhall, before *Jervis, L. C. J.*, the jury were

directed that the guano was to be equal in analysis to that of the former cargo and not to its present condition; whereupon the plaintiff obtained a verdict.

The Court said, the contract was according to the sample and analysis which had been taken, and refused the rule.

Rogers v. McNamara. Nov. 7, 1853.

ACTION FOR DEFACING LICENSE OF CAB-DRIVER.—JUSTIFICATION, PLEA OF.—DEMURRER.—ESSENCE OF ACTION.

To an action by a cab driver against his employer for defacing his license, by writing thereon the words "dismissed, 1s. 4d. short," whereby it was rendered useless, the defendant pleaded in justification that it was true. A demurrer to this plea was allowed, on the ground the interest conferred on the plaintiff by the license, and not the libel was the essence of the action.

THIS was an action by a cab-driver against his employer for defacing his license, by writing thereon the words "dismissed, 1s. 4d. short," whereby it was rendered useless, to which the defendant pleaded in justification that it was true.

Petersdorff appeared in support of a demurrer to this plea, on the ground the defendant had treated the declaration as for libel.

Willes, contra.

The Court said, that the defacing the license, which conferred an interest on the plaintiff, and not the alleged libel, was the essence of the action, and the demurrer was accordingly allowed.

Court of Eschequer.

Esparte M'Fee. Nov. 4, 1853.

COUNTY COURT.—INTERPLEADER SUMMONS.—MISTAKE IN ADDRESS.—PROHIBITION.—MANDAMUS.

It appeared that the claimant of goods, taken under a County Court execution, had obtained an interpleader summons, but in the notice under the 145th rule of the County Courts, had described himself as of Elizabeth "Terrace," instead of "Street," and the summons was accordingly dismissed: Held, that as the mistake in the address was not calculated to mislead any one, the dismissal was erroneous, and a Judge's order for a prohibition was affirmed, to restrain the sale of the goods.

In such a case, the proceeding is by prohibition in the plaint, and not by mandamus to proceed with the interpleader summons.

THIS was a motion to quash a prohibition issued by order of *Parks, B.*, on the Judge of the Brompton County Court, to restrain the sale of certain goods which had been taken in execution under a judgment in that Court, and to which a claim had been set up, and an interpleader summons obtained, by a third party. It appeared that the Judge had dismissed the

summons on an objection as to the sufficiency of the notice, under the 145th rule,¹ on the ground that the claimant's residence was incorrectly set out as Elizabeth "Terrace" instead of Elizabeth "Street."

Udall in support, on the ground the only remedy was by mandamus on the Judge to proceed with the interpleader summons, citing *Regina v. Richards*, 2 L. M. & P. 263; *Robinson v. Jenaphan*, 2 Exch. R. 333.

The Court said, the mistake in the address was not calculated to mislead any one. The Judge had, therefore, erroneously decided thereon, and he could not, so long as the interpleader summons remained undecided, give himself, by such decision, jurisdiction in the original suit which was suspended, and it was therefore necessary to restrain him from the exercise of such jurisdiction, and the rule must accordingly be refused.

Bird v. Sharpe. Nov. 5, 1853.

ACTION TO RECOVER COMPENSATION FOR INJURIES.—LIABILITY OF MASTER FOR SERVANT'S NEGLIGENCE.

The defendant's servant, who was returning home with a van and horse, had permitted a boy to ride a horse which followed but was not fastened to the van. The horse ridden by the boy fell over the plaintiff: Held, that the defendant was not liable in an action for the injuries thereby occasioned, as the horse was not under the conduct of his servant, and a nonsuit was confirmed.

THIS was a motion to set aside the nonsuit in this action which was brought to recover compensation for injuries sustained by the plaintiff from the negligent driving of a horse, under the conduct of the defendant's servant. It appeared on the trial before *Pollock, L. C. B.*, at the last Kent Assizes, that the servant had been sent by the defendant with a van and horse, and to bring back another horse, which was accustomed to follow the van without being fastened. The servant gave leave to a boy to ride this horse, and on returning home, they fell over the plaintiff, who was wheeling a barrow, although the servant was able to avoid him. The nonsuit was directed on the ground that the defendant's servant was not driving the horse which caused the accident.

Shee, S. L., in support.

The Court said, that there was no misdirection, and the rule must be refused.

¹ Which provides, that "where any claim is made to or in respect of any goods or chattels taken in execution under the process of any County Court," "the claimant shall, five clear days before the day on which the summonses are returnable, deliver to the said officer, or leave at the office of the clerk of the Court, a particular," &c., "and the name and description and address of the claimant shall be fully set forth in such particular."

The Legal Observer,

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SATURDAY, NOVEMBER 19, 1853.  
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REMUNERATION OF SOLICITORS.

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WE return with pleasure to the pamphlet of Mr. Reginald Parker, which we noticed in our Numbers of the 8th and 29th October last.

Perhaps the most valuable part of the work is that¹ which describes the various systems adopted in foreign countries with regard to the payment of lawyers. The information on this head is given with much detail, and bears marks of having been collected and compiled with care and accuracy.

The first country mentioned, next to our own, is *Scotland*—to us the most important, as being the most nearly allied to ourselves. The readers of the *Legal Observer* will remember the information afforded on the subject of the remuneration of solicitors in Scotland in our Number of 5th February, 1853. From this Mr. Parker quotes at considerable length, and to that article we refer our readers for full details. It will there be seen, that in Scotland, where the division of labour is much the same as in England, fixed rates of charges are allowed to solicitors in nearly all legal business. In conveyancing business there is a regulation price allowed for drawing and engrossing documents according to the length, which price is considerably higher than the fees allowed in England; and in cases of sales, leases, security-deeds, marriage contracts, partnership deeds, and the like, the solicitors on both sides (or the sole solicitor, if there be but one employed) are paid, in addition to such regulation fees of the solicitor who draws the deed, a per centage or commission, varying with the amount of the property. In judicial business no commission is allowed, but the

charges for drawing and for attendances in Court are higher than with us.

Scotland appears to be the only country where by strict rule of law the solicitor is in any case paid by a per centage; it is very desirable that it should be generally known how this rule works there for all parties. We believe that it gives satisfaction.

In the *United States* the functions of professional men are very various, and there is no prescribed division of labour among them as with us. The same person, as Mr. Parker remarks, may in most of the States be barrister, solicitor, attorney, proctor and pleader: and admission to practice can generally be obtained without much difficulty or previous legal education, though in some few of the States (Maine may be instanced) a long period of service or education is required.

In the majority of the States there is an established tariff of legal charges or fees, which the successful party in a law suit recovers from the loser; this tariff, however, only relates to the practitioner's charges as an attorney; for his services as a barrister, a full remuneration or *quantum meruit* may be claimed by him from his employer; and the same party may claim his legal fees as an attorney and his remuneration as a barrister, if he have acted in both capacities.

In several of the States (New York for instance) the successful party in a law suit recovers from the loser a per centage on the amount of the judgment, or value of property, towards reimbursing his expenses; and the lawyer may make any agreement with his employer, as to the amount of his own remuneration, either equalling the per centage recovered, or being more or less than it, as may be agreed. In the State of Louisiana the winner recovers no cost whatever from his opponent, and the attorney generally agrees with his employer

¹ Pp. 40 to 62.

beforehand as to the amount of his pay, and deducts it from the sum recovered. Our Author mentions no fixed rates of charge, in any of the States, for conveyancing business; this is probably accounted for by the extremely simple nature of that business in the United States.

In *France* there is an established scale of fees and expenses payable to the "*avoué*" (who is the party filling the same place as an attorney with us), for business in the Courts, and the bills are taxed by the Judge. But as to the business of conveyancing, which is transacted by the notaries, there is no rate fixing the charge, and the notaries for this business are in the habit of making agreements with their clients, indeed one of their laws has expressly declared that the payment of a notary ought to be arranged by agreement ("*aimablement*") between the parties and their notary, according to the degree of labour and difficulty attending the case. If such agreement be made, there can be no subsequent taxation; but when there is no agreement, and the parties differ as to the costs, the law refers it to the President of the Tribunal of first instance to settle the matter in dispute.

The barristers, or "*avocats*," in France are not bound by any scale or fixed rate, and they are forbidden by law from entering into any agreement as to the fees to be paid them; and by their regulations among themselves, they are forbidden from taking legal measures to recover their fees. They do, however, our Author states, often stipulate beforehand for the amount of fee they are to receive.

In *Belgium* and *Holland* the practice is the same as in France.

In the various states of *Italy* (except in those parts which are under Austrian dominion and therefore under German Law) there are advocates and attorneys with distinct functions as in England, except that the attorney may in all Courts, except the Court of Cassation, dispense with the assistance of an advocate. There is a fixed tariff of remuneration of attorneys throughout these states, and the tribunals possess the power of taxing the charges of attorneys and notaries, and, in some States, of the advocates also; but in the Sardinian dominions advocates are not restricted to any rate of charge, and the charges of attorneys, though nominally fixed, are in practice quite open, the tariff being so low as to be entirely disregarded.

In *Lombardy* and the *Venetian States*,

as in Germany, the advocate (*avvocato*) is the sole practitioner of the law, and performs the functions in other places performed by the *procuratori*, or attorneys. The Austrian code declares to be void any promise of recompense beyond the fixed rates for services in a cause. If a present fee be given by the client beyond the legal fees, the lawyer cannot be called on to refund it.

In *Prussia*, and probably in *Austria* and other parts of Germany, the lawyer combines in himself the character of advocate, attorney and notary. He is paid according to a fixed tariff for all work done in, or connected with, the Courts; and his bill is always taxed. In conveyancing these strict rules do not appear to apply, but the conveyancer is paid according to length. In some of the states, however, the lawyer may agree to be paid by the job.

The condition of *Spain*, *Portugal*, and *Russia* appears, by our Author's remarks, to be in so low a state as to legal proceedings, that it would answer no good purpose to inquire into them, even were it likely that any definite information could be obtained regarding them. The practice of countries where civilization is at a very low ebb need hardly be quoted by way of precedent.

Our Author sums up the information he has laid before his readers in the following words:—

"It appears that in the most liberal and philosophical countries—the United States, in part of Italy, in Germany, and even in France, as regards notaries—the Legislature is wise enough not to compel in all cases a strict adherence to fixed prices. In New York, a bargain made *bona fide* between solicitor and client respecting the remuneration of the former, is allowed. In the countries where a bill of costs is taxed, as a matter of course, the delays and chicane are worse than in England, where practically the demand of a client for taxation of his lawyer's bill, is in itself proof of dissatisfaction, and of an intention to break off the connexion between them. The result of taxing all bills *ex necessitate rei*, is to put all practitioners pretty much on the same footing in respect to their pay; no one can receive more than another, and thus one motive to induce the client to select the more respectable and less exacting member of the Profession is wanting."

After thus fully explaining the practice in our own and foreign countries, and alluding to those parts which appear most objectionable and to require correction, Mr.

Parker states the results at which he arrives, and which are given in the extracts we made from the work in our Number of 8th Oct. last. These results are obviously the most important part of the matter before us—the end, indeed, and object, for which alone such an inquiry is valuable—and our Author therefore does right to submit them to us, according to his own opinion, leaving the further consideration of them to his readers.

Assuming, as we think we may safely do, that the present system is faulty, unsatisfactory to all parties, causing prolixity, delay and expense, and tending to defeat the end of justice, we arrive at the very important and more difficult question, viz., what is the nature of the remedy to be proposed, and what the mode in which it is to be carried out.

This part of the subject appears to divide itself into two branches, which, though mutually bearing on each other, yet require to be treated separately;—1st. The costs which a solicitor may claim against, or receive from, his own client or employer; and 2nd. Those which the law shall award to be paid by opponents or hostile parties, or out of trust funds, charity estates, funds of infants, or other funds of that nature.

With regard to costs falling under the first head, we hold that they should be put on the same footing as the remuneration of any other workman. If the parties, that is, the employer and his solicitor, think right, they should be allowed to agree on the mode, rate, or amount of payment, or the manner in which it is to be ascertained; and when there is no agreement, the amount should be settled like any other workman's bill in case of dispute, by a jury; or, if preferred, by taxing officers substituted for a jury as at present. In thus allowing validity to an agreement we, perhaps, go beyond the views of our Author, who appears not absolutely to propose that an agreement should in all cases be allowed; but we think the whole chain of his reasoning leads to the inference that he would approve of a contract being legalised, subject only to the same rules as to its construction and validity as must govern a contract of a similar nature on any other subject.

As to the costs of falling under the second head, which must necessarily be regulated by some fixed scale, our Author not having made the division of costs which we have above suggested, does not afford us, in his conclusions, any definite assistance or explanation of his views. Our own opinion, however, is much in favour of the system of

a per centage, already adopted in some foreign countries, as shown by Mr. Parker. We consider that whenever a Court of Justice is resorted to, to ascertain or enforce payment of a debt or demand, the Court, when adjudging the case and the sum to be recovered, might also be allowed to award to the claimant a certain per centage upon the debt recovered, by way of costs; and on the other hand, a defendant unjustly sued should be entitled to the like per centage on the amount unjustly claimed from him by the unsuccessful plaintiff. This rate or per centage would not at all affect the question of costs as between the solicitor and his client, which would still be governed, as far as practicable, by the rules we have above proposed with regard to the first description of costs; and it would be open to the parties to agree or not (where there are parties competent to agree), that the solicitor should have as his pay the per centage allowed by the rules of Court, as above suggested. But if this plan of payment by per centage (which we think would be highly satisfactory to all, and tend much to simplify proceedings) be not adopted, then the present practice of taxing costs must be followed in such cases, altered only so far as to allow to the taxing officers the most liberal powers and discretion, and permitting them whenever they shall think right to adopt an allowance by per centage or even a gross sum; and particularly liberating them from the present obligation to allow according to the length of the documents or pleadings, and no more.

The same rule of per centage or of taxing when necessary might, by the application of a little ingenuity, and with alterations or exceptions according to the circumstances, be made to suit all cases in which the costs are to be paid by an unwilling or incompetent party, or out of a trust fund or fund in Court.

When a claim by a solicitor for costs against his client or employer is referred to the taxing officers, such officers must be governed by no fixed and invariable scale or measure of charge. They must, of course, take into consideration all the circumstances of the case, and award accordingly. They will be only so far guided by the present rates of allowance as they shall think the cases are similar and the rules applicable. They will by no means disregard what has been the custom in preceding cases; but when called on to decide what shall be the pay of a professional man in the latter half of the 19th century, they will not confine them-

selves to the charges paid to the same class of workmen in the beginning of the 18th century. They will, like a jury, or men of the world, look to the position and usual remuneration of their fellow countrymen at the time in question; and they will consider the talent and labour bestowed, and the responsibility incurred. It will often be their province to decide whether there be any agreement or usage in the case on the subject of costs, or anything approaching to it, which ought to affect the rate of allowance; and also to determine whether the agreement be fair and such as ought in justice to be sustained. And when such an agreement clearly exists, they may often be called on to interpret its meaning and apply it to the circumstances.

We believe, that were professional men emancipated from the present narrow-minded and injurious rules as to costs,—and we think it is clear it could be done with facility and justice,—a system of charge and allowance would soon become understood which, if the proposed change did not at once tend to lighten the duties of the taxing officer, would at any rate, after a short lapse of time, afford data from which improvements in the rules of taxation might be framed, and rendered capable of gradual alteration and adaptation from time to time, as the lapse of years or altered circumstances might require. Every argument, whether of justice or sound policy,—arguments that must always go hand in hand,—is in favour of such an alteration; and we cannot but believe that public opinion will before long enforce it on the legislature, or on those authorities whose paramount duty it is to originate reforms obviously tending to the public advantage.

ORDERS IN LUNACY.

7th NOVEMBER, 1853.

I, ROBERT MONSEY, BARON CRANWORTH, Lord High Chancellor of Great Britain, intrusted, by virtue of her Majesty the Queen's Sign Manual, with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind, do, with the advice and assistance of the Right Honourable SIR JAMES LEWIS KNIGHT BRUCE and the Right Honourable SIR GEORGE JAMES TURNER, the Lords Justices of the Court of Appeal in Chancery, also being intrusted as aforesaid, and by virtue and in exercise of the powers or authorities in this behalf vested in me by the Lunacy Regulation Act, 1853, and of every other power or authority in anywise enabling me in this behalf, order as follows:—

I. The General Orders in Lunacy dated respectively the 27th day of October, 1842, and the 15th day of April, 1844, are hereby discharged.

II. All pending proceedings are to be carried on according to the provisions of these Orders, as far as may be practicable, and subject thereto according to the practice heretofore subsisting; and, in case of doubt as to the mode of procedure, in such of the modes aforesaid as the Masters shall direct: and the provisions of these Orders are to be deemed to be subject to variation by Special Order in any case, and are to be applicable only where there may be no express directions contained in or given by any Special Order concerning any of the several matters provided for in these Orders, or so far as such directions may not extend.

III. In these Orders, unless there be something in the subject-matter or context repugnant to such a construction, words expressed in the singular and in the plural number respectively are to be construed as applicable respectively to several persons or things, and to one person or thing, and words importing the masculine gender are to be construed as applicable to females as well as males. The expression "the Masters" is to be taken to mean the Masters jointly and severally; the expression "the Accountant-General" to mean the Accountant-General for the time being of the High Court of Chancery; the expression "the Bank" to mean the Bank of England; the expression "next of kin" to comprehend heir or heirs-at-law, and also the person or persons who would be entitled to the lunatic's estate, or to shares thereof, under the Statutes for the distribution of the effects of intestates, in case he were dead intestate; the provisions referring to Orders in Lunacy are to be deemed to extend as far as they may be applicable, *mutatis mutandis*, to the case of directions contained in reports confirmed by fiat; and the provisions respecting the committee of the estate, his appointment, accounts, payments, allowances, and matters of the like nature are to be deemed to extend as far as they may be applicable, *mutatis mutandis*, to the case of a receiver.

IV. Where in these Orders, or in a Special Order, a limited time from and after a date or event is appointed or allowed for doing any act or taking any proceeding, the computation of such limited time is not to include the day of such date, or of the happening of such event as aforesaid, but is to commence at the beginning of the next following day; and the act or proceeding is to be done or taken, at the latest, on the last day of the limited time according to this computation.

V. Where according to these Orders, or a Special Order, the time for doing any act or taking any proceeding expires on a Sunday or on a day on which the offices are closed, and by reason thereof the act or proceeding cannot be done or taken on that day, the act or proceeding is, as far as regards the time of doing or taking the same, to be held to be duly done

or taken if done or taken on the Monday next following, or on the day on which the offices next open, as the case may be.

VI. The power of the Lord Chancellor, Lords Justices, and Masters respectively, to enlarge or abridge the time for doing any act or taking any proceeding upon such (if any) terms as shall to him or them seem expedient, is to be deemed unaffected by these Orders.

Proceedings respecting the Inquisition.

VII. The notice to an alleged lunatic of the presentation of the petition for inquiry is to be by service on him of a copy of such petition, with a notice thereon indorsed, signed by the petitioner or by his solicitor, to the following effect, with such variations as circumstances may require :—

“ Mr. A. B.,

“ Take notice, that a petition, of which a copy is within written, was on the _____ day of _____ presented to the Lord Chancellor by me [or, by C. D., of _____], and that by virtue of and under the same an inquiry may be ordered to take place before one of the Masters in Lunacy, as to whether you are or are not of unsound mind and incapable of managing yourself and your affairs, but that you may, in case you think fit, demand that such inquiry may, if ordered, be had before a jury, in which case a notice of such your desire must be signed by you, and attested by your solicitor, and filed with the Registrar in Lunacy, at his office in Southampton Buildings, Chancery Lane, London, within seven days after your receipt of this present notice.

“ Dated this _____ day of _____
 (Signed) “ C. D.
 [or X. Y., of _____]
 “ Solicitor for the petitioner C. D.]”

VIII. The notice to an alleged lunatic of a report of the Commissioners in Lunacy, under Section LIV. of the said Act, is to be to the effect following, with such variations as circumstances may require :—

“ Mr. A. B.,

“ Take notice, that the Commissioners in Lunacy did on the _____ day of _____ make a report to the Lord Chancellor, stating that you are detained or taken charge of as a person of unsound mind [or, that you are alleged to be a person of unsound mind], and that they are of opinion that your property is not duly protected [or, that the income of your property is not duly applied for your benefit]. And take notice, that, such report having been duly filed, an inquiry may thereon be ordered by the Lord Chancellor to take place before one of the Masters in Lunacy as to whether or not you are of unsound mind and incapable of managing yourself and your affairs; but that in case you think fit to demand that such inquiry, if ordered to be held, may take place before a jury, a notice thereof must be signed by

you and attested by your solicitor, and filed with the Registrar in Lunacy, at his office in Southampton Buildings, Chancery Lane, London, within seven days after your receipt of this present notice.

“ Dated this _____ day of _____
 (Signed) “ X. Y.”

IX. A notice under either of the two last preceding Orders is to be served on the alleged lunatic, by being delivered to him personally: or where, by reason of the condition or situation of the alleged lunatic, or the other circumstances of the case, personal service cannot be effected, or it is deemed inexpedient to effect personal service, then by being delivered to some adult inmate at the dwelling-house, or usual or last known place of abode, of the alleged lunatic within the jurisdiction, and an affidavit of service stating particularly the time and place and mode of service, and, where there has not been personal service, the grounds and reasons of such service not having been made, is to be filed with the registrar.

X. The notice to be given by an alleged lunatic for demanding a jury may be to the effect following, with such variations as circumstances may require; that is to say :—

“ In the matter of A. B., an alleged lunatic.

“ I, the above-named A. B., having been on the _____ day of _____ served with a notice of the presentation of a petition for an inquiry [or, of the filing of a report whereon an inquiry may be ordered] whether or not I am of unsound mind and incapable of managing myself and my affairs, do hereby demand that, in the event of such an inquiry as aforesaid being ordered, the same be had before a jury.

“ Dated this _____ day of _____
 (Signed) “ A. B.

“ Witness,

M. N., of _____

“ Solicitor for the above-named A. B.”

Proceedings after Inquisition.

XI. The Masters are in each matter, immediately after inquisition finding the party to be a lunatic, to inquire and report on the matters following :—

1. The lunatic's situation.
2. The nature of his lunacy.
3. Who is the most fit person to be appointed the committee of his person and of his estate.
4. Of what his fortune consists.
5. The amount of his income.
6. In what manner, and at what expense, and by whom, and where, he has been maintained: what is fit to be allowed for his past maintenance: whether anything and what is due, and to whom, in respect thereof; and to whom and out of what fund the same ought to be paid.
7. What is fit to be allowed for his future maintenance. From what time the allowance ought to commence, and out of what fund the same ought to be paid.

XII. The Masters are to be at liberty from

¹ Where a demand for a jury has been filed before petition from this to the end is to be omitted.

time to time to make such inquiries as to them shall seem expedient respecting any dealings with the lunatic's estate, and the application of the same, or any part thereof, prior to the date of the inquisition, and respecting the state and condition of the lunatic when any such dealings took place, whether any request or proposal in that behalf shall or shall not have been made to or laid before them, and to report thereon, and on the circumstances connected therewith, and the steps, if any, proper to be taken, and by and against whom in relation thereto.

XIII. The Masters are to be at liberty, when it shall seem to them expedient, to inquire what debts, if any, not open to dispute or question are due from the lunatic, and to whom and whether the same, or any, and what parts or part thereof ought to be paid, and out of what funds or property, and to entertain proposals for the adjustment or settlement thereof, and for the compromise and settlement of any disputed debt, claim, or demand upon or against the lunatic or his estate, and to report on such matters respectively.

XIV. The Masters are also to be at liberty from time to time to receive any proposal and conduct any inquiry touching any other matters affecting the property of the lunatic, whether real or personal, and to report thereon.

XV. The committee of the estate is annually, or at such longer or shorter periods as the Masters shall fix, to procure his accounts to be delivered into the Master's office, and is to attend before the Master from time to time, and at or within such time as the Masters shall fix, and have such accounts taken and passed, in taking and passing which accounts the Masters are to make to him all just allowances, including an allowance of his reasonable and proper costs, charges, and expenses of passing the accounts and those of the next of kin and other persons (if any) allowed to attend on the passing of the costs of the estate.

XVI. The balances certified by the Masters to be due from the committee of the estate on passing his accounts from time to time, or so much thereof respectively as the Master certify to be proper to be paid by him, are to be paid by him, at or within such time as the Masters shall fix, into the bank, with the privy of the Accountant-General, to the credit of the matter, and the same, when paid in, and any sum of cash at the bank to which the lunatic may be entitled, or so much thereof respectively as the Masters shall by their certificate direct, are from time to time, and, in case the Masters shall think fit to fix a time, then within such time as the Masters shall fix, to be laid out in the purchase of Bank 3l. per cent. Annuities, in the name and with the privy of the said Accountant-General, in trust in the matter: and the dividends from time to time to accrue due on the Bank Annuities to be so purchased, and all accumulations of dividends, are, unless the Masters shall otherwise certify, as and when the same amount to a competent sum, to be laid out by the Accountant-General in like manner, without any requests for the purpose.

XVII. Where the committee of the estate makes default in bringing in his account, or in having the same passed, or in paying the balance certified to be due from him, or in causing the same, or any sum of cash in the bank, to be laid out pursuant to any certificate or direction in that behalf, the Masters are, unless good cause be shown to them to the contrary, not only to disallow any salary claimed by him or his representatives, but also to charge him or them with interest, after the rate of 5l. per cent. per annum, upon any balance or cash for the time during which the same respectively appears to have improperly remained in hand or uninvested (as the case may be).

XVIII. The committee of the estate is on each occasion of passing his account, and also whensoever the Masters may so require, to satisfy the Masters that his sureties are living, and that neither of them has been declared bankrupt or insolvent; and in default thereof, the Masters are to require him to enter into fresh security within such time as they shall fix.

XIX. The security of the committee of the estate may be from time to time on request reduced to an amount corresponding, in the judgment of the Masters, with the condition for the time being of the estate and effects of the lunatic, and the dividends, interest, and annual produce thereof. And he is to be at liberty to enter, from time to time, into fresh security accordingly, to the approbation of the Masters.

XX. Where the Masters by certificate direct or give liberty for the payment into the bank of money, or the transfer into the name of the Accountant-General of stock respectively belonging to the lunatic, to the credit of or in trust in the matter, they are to be at liberty to direct that the same be placed to such particular account, or that it shall not be paid or transferred out without notice to such person, as occasion may require and they may direct.

XXI. The Masters are from time to time in each of the cases following, without Special Order, to inquire and report whether or not it is expedient that a committee of the person or of the estate should be appointed, and if so, who is the most fit person to be appointed: that is to say,

1. On default of a person approved to be committee of the estate in duly perfecting his security.
2. On default of a committee of the estate in duly perfecting a fresh security when required by the Masters.
3. On the death or discharge of a committee, or one of several committees (where the custody does not survive).

XXII. The Masters are to be at liberty to permit any person whose attendance may appear to them to be proper, and for the security or advantage of the lunatic or his estate, other than the committee and next of kin of the lunatic, to attend on the proceedings, or on any particular proceeding before them in the matter; and all the provisions contained in Section

81 of the said Act, as to the attendance of next of kin, are to extend and apply, *mutatis mutandis*, to the attendance of such person as aforesaid as well before the Masters as before the Lord Chancellor or Lords Justices.

XXIII. The Masters are to be at liberty to direct that several parties appearing before them by different solicitors shall appear by the same solicitor, or otherwise at their own costs, or that several parties appearing before them by the same solicitor shall appear by different solicitors, and the parties are not to appear otherwise before the Lord Chancellor or Lords Justices, except by special leave, or at their own costs.

XXIV. The Masters are to be at liberty, on request or otherwise, to make a separate report, or to state any circumstances especially with respect to the subject-matter of a report, as they see fit, and are to be at liberty to make a special report or special certificate on any matter as they see fit.

XXV. In reports, certificates, orders, and other documents, issued from or brought into the offices of the Masters and registrar respectively, numbers are to be denoted by figures and not by words, except in affidavits and the conclusion of reports and certificates, and the ordering parts of orders.

XXVI. Any person in whose custody, possession, power, or control the same may be, is to be at liberty to deposit any will, codicil, or testamentary paper of the lunatic in the Office of the Masters, upon oath, as they may direct, there to remain for safe custody.

Stamps and Per Centage.

XXVII. The stamps to be used under the Lunacy Regulation Act, 1853, shall be the same as those for the time being in use, under an Act passed in the Session of Parliament held in the 15 & 16 Vict., intitled "An Act for the Relief of the Suitors of the High Court of Chancery." Such stamps are to be affixed by the parties requiring the same on the vellum, parchment, or paper on which the proceeding in respect whereof such stamps shall be required is written or engrossed, or which may otherwise be used in reference to such proceeding.

XXVIII. Every officer who shall receive any document to which a stamp shall be so affixed, is immediately upon the receipt thereof to obliterate or deface such stamp, by impressing thereon a seal to be provided for that purpose, but so as not to prevent the amount of the stamp from being ascertained, and no such document is to be filed or delivered out until the stamp thereon shall be obliterated or defaced as aforesaid.

XXIX. The Masters may in such cases as they may think fit, certify that the whole or any part of the per centage payable under the Lunacy Regulation Act, 1853, is to be paid from time to time out of cash arising from dividends of the lunatic that may be standing to the credit of the matter of any lunacy, either generally or to any particular account, and in such cases the certificate is to be left at the

office of the Accountant-General, and the Accountant-General is, by virtue of such certificate, when so left, from time to time out of such cash to carry over to the credit of the Suitors' Fee Fund Account the amount to be so certified, and any Orders made and to be made in any such matters respectively are to be subject to this Order, and to be acted upon by the Accountant-General accordingly.

XXX. In all other cases the said per centage is to be paid by means of stamps, and the Chief Clerk to the Masters is from time to time to give notice in writing to the committee, or other person, of the amount of per centage to be paid by him, according to the certificate of the Masters, under Section 77 of the said Act, and of the time within which such amount is to be paid, which time is to be fixed by the Masters, and mentioned in their certificate; and the said committee or other person is within such time to pay the amount stated in the notice out of the income of the lunatic, by purchasing stamps to such amount, and file such notice with the stamps affixed at the Office of the Masters.

XXXI. Where it appears to the Masters, with a view to the establishment of a uniform period for the payment of per centage in the several matters in lunacy, or for other purposes, to be expedient, they are to be at liberty to make in any case a certificate comprising the income of a period greater or less than one year, and stating the amount of per centage payable for such period, calculated according to the scale provided in the said Act.

XXXII. The Masters are, once at least in every six months, and oftener if they shall think fit, to certify the names of all persons, if any, who shall then be in default in paying the amount certified to be payable by them in respect of the said per centage, and filing the notices duly stamped as hereinbefore provided, with the amounts payable by such parties respectively.

XXXIII. The foregoing Orders respecting per centage shall extend and be applied to the property of lunatics under the protection of the Lord Chancellor and Lords Justices, intrusted as aforesaid, by virtue of proceedings taken under the Act of the Session of Parliament holden in the 8 & 9 Vict., c. 100, s. 95, and also to the property of lunatics under the protection of the Lord Chancellor and Lords Justices, intrusted as aforesaid by virtue of the transmission of the record of an inquisition from Ireland and its entry of record in the Chancery of England, except in respect of income arising from property of such persons not within the jurisdiction of the Lord Chancellor and Lords Justices, intrusted as aforesaid, nor administered under their authority; and the several foregoing Orders as to fees, shall extend and apply to all the proceedings in the matter of such lunatics as aforesaid, and in the matter of any persons residing out of England and Wales, and declared idiot, lunatic, or of unsound mind, according to the laws of the place where they are residing, where the

Lord Chancellor or Lords Justices, intrusted as aforesaid, make an order affecting the stock, or any portion of the capital, stock, or shares of such person as last aforesaid, or the dividends thereof.

And for the purpose of saving the repetition in Orders in Lunacy that may from time to time be made, of directions usually inserted therein, I do, in pursuance of the Lunacy Regulation Act, 1853, and with the advice and assistance aforesaid, further order as follows :—

XXXIV. Where any matter or thing is referred to, or is directed or permitted to be done by or before the Masters, it is to be considered to be referred to them jointly and severally, and may be done by or before them or either of them, but so nevertheless that all matters in the same lunacy may, so far as may be convenient, be conducted and carried on before the same Master.

XXXV. All Orders for the appointment of committees, and for the allowance of maintenance, are to be deemed to take effect only until further Order.

XXXVI. Where it is ordered that a person named be appointed committee of the estate, the Order is to be deemed to take effect only on the Master certifying that he has given such security as they have approved of for answering the estate and accounting for the rents, profits, and produce thereof once in every year, or oftener if thereunto required, before the Masters, and such security is to be perfected at or within such time as the Masters may appoint; and until such security shall have been perfected the approved committee is not to interfere in any manner in the affairs and concerns of the lunatic as the committee of his estate or otherwise.

XXXVII. Where it is ordered that a person named be appointed receiver of the estate, or the Masters are directed to appoint a receiver thereof, they are to allow him a reasonable salary for his care and pains in the management of the estates, he first giving security, to be approved of by the Masters, and taken before a Commissioner to administer Oaths in Chancery in the country, if there shall be occasion, duly and annually to account for what he shall receive, and to pay the same as he shall be directed. And the tenants of the lunatic's estates are to attorn and pay their rents, in arrear and growing rents to the receiver, who is to be at liberty to let and set the estates from time to time, with the approbation of the Masters, as there shall be occasion.

XXXVIII. Where it is ordered that the committee of the estate do receive or be at liberty to receive any money on account of the lunatic or his estate, he is to give credit for the same on passing his accounts before the Masters; and where any sum is ordered to be allowed for the maintenance of the lunatic, or to be expended for any other purpose out of his estate, the committee of the estate is to be al-

lowed the amount of the allowance for maintenance, or the amount to be expended (as the case may be), on passing his accounts before the Masters.

XXXIX. Where it is ordered that the committee of the estate do pay any sums of money for maintenance, he is to pay the same out of income; and where it is ordered that he do pay any costs, he is to pay the same, when taxed, out of any moneys coming to his hands after providing for the maintenance.

XL. Where it is ordered that the committee of the estate of the person be at liberty to retain any furniture or effects of the lunatic, he is to sign an inventory thereof; and an undertaking to deliver up the same when required so to do, and such inventory and undertaking are to be deposited in the office of the Masters.

XLI. Where it is ordered that the committee of the estate be discharged, the Masters are to take and pass his account of his receipts and payments for or on account of the lunatic and his estate, from his appointment, or from the foot of his then last account passed in the matter, up to the day of the date of the order, and the balance (if any) which the Master may certify to be due from the committee on passing the aforesaid account, is to be paid by him, by virtue of the certificate, into the bank, with the privity of the Accountant-General, to the credit of the matter, within such time as the Masters shall by their certificate direct; and in case the Masters shall find a balance to be due to the discharged committee, the same is to be paid to him by the new committee of the estate, out of the estate of the lunatic; and upon payment of the aforesaid balance (if any) by the discharged committee in manner aforesaid, or in case there shall not be a balance found due from him, or in case the taking and passing of the account is not required, and may in the opinion of the Masters be properly dispensed with, then his security is to be discharged.

XLII. Where the committee of the estate dies, the Masters are to take and pass the account of his receipts and payments for and on account of the lunatic and his estate, from his appointment, or from the foot of his then last account passed in the matter up to the day of his death. And the balance (if any) which the Masters may certify to be due from the late committee on passing the aforesaid account may be paid by his legal personal representatives, by virtue of the certificate, into the bank, with the privity of the Accountant-General, to the credit of the matter, within such time as the Masters shall by their certificate direct; and in case the Masters shall find a balance to be due to the late committee, the same is to be paid to his legal personal representatives by the new committee of the estate out of the estate of the lunatic; and upon payment of the aforesaid balance (if any) by the legal personal representatives of the late committee in manner aforesaid, or in case there shall not be a balance found due from him, or in case the taking and passing of the account is not required, and may in the opinion of the Masters be properly

dispensed with, then his security is to be discharged.

XLIII. Where a *supersedeas* is issued, the Masters are to take and pass the account of the committee of the estate of his receipts and payments for and on account of the lunatic and his estate from his appointment, or from the foot of his then last account passed in the matter up to the day of the date of the Order. And the balance (if any) which the Masters may certify to be due from the committee on passing the aforesaid account is to be paid by him to the lunatic. And in case the Masters shall find a balance to be due to the committee, the same is to be paid to him by the lunatic; and upon payment of the aforesaid balance (if any) by the committee in manner aforesaid, or in case there shall not be a balance found due from him, or in case the taking and passing of the account is not required, then his security is to be discharged, and due notice of attending the Masters is to be given to the lunatic.

XLIV. Where a lunatic dies, the Masters are to take and pass the account of the committee of the estate of his receipts and payments for and on account of the late lunatic and his estate, from his appointment or from the foot of his then last account passed in the matter up to the day of the decease of the late lunatic. And the balance (if any) which the Masters may certify to be due from the committee on passing the aforesaid account is to be paid by him to the legal personal representatives of the late lunatic, to be by them applied in a due course of administration; and upon payment of the aforesaid balance (if any) by the committee in the manner aforesaid, or in case there shall not be a balance found due from the committee, or in case the taking and passing of the account is not required, and may in the opinion of the Masters be properly dispensed with, then his security is to be discharged.

XLV. Where a committee enters into a fresh security, upon the same being duly perfected, and upon the balance then due by the committee being paid or secured to the satisfaction of the Master, the security theretofore in force is to be discharged.

XLVI. Where, under or in pursuance of these Orders, or any special Order, the security of a committee of the estate or receiver is to be discharged, then, in the case of a bond, the Masters are to deliver up the same to be vacated and cancelled. And in the case of a recognizance the Masters are by a certificate to direct the Clerk of the Inrolments of the Court of Chancery to attend the Master of the Rolls with the inrolment of the recognizance to be vacated and discharged; and such clerk is, by virtue of such certificate, to attend accordingly. And in the case of security having been given in the whole or in part, by a sum of money or stock being brought into Court, the Masters are, by report, to approve the payment or transfer in such manner as the committee or receiver may request, and as may seem proper, of the sum of money or stock so brought in as

aforesaid, and of all stock dividends and accumulation of dividends produced by or arising from the same; and on such report being confirmed, such payment or transfer is to be made accordingly, by or with the privity of the Accountant-General, as the case may require.

XLVII. On the death of a lunatic, or a *supersedeas* being issued, the Masters are to ascertain and report who is entitled to receive the several deeds, securities, bonds, papers, effects and things relating to or forming part of the estate and property of the lunatic remaining deposited in their office for safe custody, and on such report being confirmed the same are to be delivered out to the person who may be entitled to receive the same respectively.

XLVIII. Where it is ordered that any costs, or costs, charges, and expenses be taxed, the Taxing Master of the Court of Chancery in rotation, or the Taxing Master to whom the taxation of costs in the matter stands referred (as the case may be), is to tax and certify such costs, or costs, charges, and expenses, and also to certify the names of the respective solicitors to whom the same should be paid; and due notice of attending the Taxing Master on the taxation is to be given to such parties as the Master shall have certified are to attend on the proceedings in the matter; and where it is ordered that the costs, charges, and expenses of any committee or next of kin in the matter of any lunacy be taxed, the Taxing Master, in taxing such costs, charges, and expenses, is not to allow the costs, charges, or expenses of any petition or application upon which no order shall have been drawn up, unless the same shall by any order be directed to be allowed or ordered to be costs in the matter of such lunacy; nor to allow the costs, charges, or expenses of any proposal or inquiry before the Masters, which they shall have disallowed, or not thought fit to adopt or carry into effect, unless the Masters shall have certified that such proposal or inquiry was proper.

XLIX. Where, under or in pursuance of the said Act, or these Orders, or any special Order, fiat, or certificate, any money is paid into the bank with the privity of the Accountant-General, or any money or dividends, or accumulations of dividends, is or are invested in his name, and with his privity, in the purchase of Bank Annuities, or any stocks, funds, or annuities are transferred into his name and with his privity, in the books of the Governor and Company of the Bank of England, or of any other public company, or any stocks, funds, or annuities standing in his name are carried over in trust in a matter or to any account therein, he is to declare the trust thereof respectively accordingly, subject to further Order.

L. For the purposes of any payment or investment to be made under these Orders, or any Special Order, by the Accountant-General, he is to be at liberty to draw on the Bank of England, according to the form prescribed by the Act of Parliament passed in the 12th year of the reign of his late Majesty King George the First, and intituled "An Act for better

securing the moneys and effects of the Suitors of the Court of Chancery, and to prevent the counterfeiting of East India Bonds and indorsements thereon, as likewise Indorsements on South Sea Bonds,* and the General Rules and Orders of the said Court in that case made and provided.

LI. Where any sum of stock standing in the books of the Governor and Company of the Bank of England, or any other public company, in the name of the Accountant-General, in trust in a matter generally, or on a particular account, is to be sold with his privy, one of the cashiers of the bank is to have notice to attend the sale, and is to receive the money to arise thereby, and upon receipt thereof is forthwith to pay the same into the bank, with the privy of the Accountant-General, to the credit of the matter generally, or on the particular account (as the case may be).

LII. Where it is ordered that a sum of stock standing in the books of the Governor and Company of the Bank of England, or other public company, be transferred into the name and with the privy of the Accountant-General of the Court of Chancery, in trust in the matter, either generally or on a particular account, and no person is named in the Order for making the transfer, the Secretary, or Deputy Secretary, Accountant-General, or Deputy Accountant-General, for the time being, of the said Governor and Company, or other proper officer of such other company, is to make the transfer; and he or one of the cashiers for the time being of the said Governor and Company, or other such proper officer as aforesaid, is to receive any sum of money standing in the books of the said Governor and Company, or such other company as aforesaid, accrued due at the date of the Order, by way of dividend or periodical payment in respect of the stock to be transferred, and also any future sum so to accrue due previously to the transfer, and is to pay the same into the bank, with the privy of the Accountant-General of the Court of Chancery, to the credit of the matter, either generally or on such particular account as aforesaid, as the case may require.

LIII. Where it is ordered that the Accountant-General of the Court of Chancery, or any other person, or any company or body, do pay or be at liberty to pay any sum or sums of money, dividend, or periodical payments, or deliver any effects to the committee of the estate, the Order is not to take effect unless and until the Masters shall have certified that he has perfected his security.

LIV. Where a report approving and approving of an agreement by an intended lessee to take a lease of certain hereditaments, upon the terms and conditions therein specified or referred to, is confirmed, and it is ordered that the agreement be adopted and carried into effect, the Masters (if they shall not have already done so) are to settle and approve of a proper lease to be granted to the intended lessee of the same hereditaments, at the rent, for the

period, and under and subject to the covenants and conditions agreed on and approved of by the Masters; and the committee of the estate is, in the name and on behalf of the lunatic, to execute the lease when so settled and approved of, upon the Masters signing their allowance thereof, and upon the intended lessee executing a counterpart thereof, and the Masters are to certify accordingly.

LV. Where it is ordered that the committee be at liberty to raise by mortgage of any part of the lunatic's estate a sum of money for any purpose, the Masters are to settle and approve of a proper mortgage; and the committee, upon payment to him, or as may be directed, of the amount to be raised, is, in the name and on the behalf of the lunatic, to execute the mortgage when so settled and approved of, and to do all such other acts as shall be necessary to effectuate the same; and the committee is, out of the rents, profits, and produce of the lunatic's estate, to pay and keep down the interest on the mortgage.

LVI. Where a report approving of the sale of part of the lunatic's real or leasehold estate is confirmed, the purchaser is, at or within such time as the Masters shall fix, to pay the purchase-money for the hereditaments sold into the bank, in the name and with the privy of the Accountant-General, to the credit of the matter, and to such particular account (if any) as the Masters may appoint; and upon the same being paid in, the purchaser is to be let into the possession of the hereditaments sold, and the receipts of the rents and profits thereof, as from such day as the Masters may appoint. And the committee of the estate is forthwith, in the name and on the behalf of the lunatic, to execute all proper conveyances, assignments, and assurances of the hereditaments sold unto the purchaser and his heirs, or his executors, administrators, and assigns, or as he or they shall direct, to be settled by the Masters, and due notice of attending the Masters is to be given to all parties interested.

CRANWORTH, C.

J. L. KNIGHT BRUCE, L. J.

G. J. TURNER, L. J.

DECISIONS ON RECENT STATUTES. —COMMON LAW PROCEDURE ACT.

AMENDMENT UNDER S. 52 OF PLEADING FRAMED TO CAUSE EMBARRASSMENT.— STATUTE OF LIMITATIONS.

To a declaration for principal and interest on mortgage-deeds, the defendant pleaded that the cause of action did not accrue within 20 years, and the plaintiff replied that the defendant, before the commencement of the suit, made an acknowledgment that the debt remained unpaid and due to the plaintiff within the true intent and meaning of the Statute, and that the action was brought within 20

years after such acknowledgment. A rule had been obtained under s. 52 of the 15 & 16 Vict. c. 76, for the amendment of this replication as framed to embarrass the fair trial of the action. In making the rule absolute, *Parke, B.*, said,—“The 3 & 4 Wm. 4, c. 42, provides three modes by which a specialty debt may be taken out of the operation of the Statute;¹ and it is a prejudice to a defendant to be compelled to come prepared to meet three different matters, when perhaps the plaintiff intends to rely on one only.” *Forsyth v. Bristowe*, 8 Exch. R. 347.

ISSUE OF EXECUTION ON EXISTING JUDGMENT UNDER S. 128.—SUGGESTION UNDER S. 129.

A judgment was signed on April 22, 1850, and the parties thereto were alive, as required by s. 128 of the 15 & 16 Vict. c. 76. It was *held*, that no suggestion was necessary to be entered on the roll under s. 129, but that execution might issue at once. The right to proceed under the latter section only accrues where the case is not within the previous section, which applies to existing judgments. It is therefore unnecessary to revive in order to issue execution during the lives of the parties to judgments signed more than a year and a day, but less than six years, before the Act came into operation. *Boodle v. Davis*, 8 Exch. R. 351.

ENTRY OF CASE ON SUGGESTION OF ERROR UNDER S. 155.

A writ of error to the Exchequer Chamber under the 15 & 16 Vict. s. 76, s. 155, may be set down and be proceeded with to the argument as on a demurrer under the 67th rule of Hil. T. 16 Vict. *Per curiam*,—“Therefore, all that is required is, that the cause should be entered four clear days before the first day appointed for argument, whether in Term or Vacation.” *South Eastern Railway Company v. South Western Railway Company*, 8 Exch. R. 367.

¹ In the course of the argument, *Purke, B.*, observed,—“The 3 & 4 Wm. 4, c. 42, s. 5, after mentioning three kinds of acknowledgment, says, that the plaintiff ‘may, by way of replication, state such acknowledgment,’ that is, an acknowledgment either by writing, or by part payment, or part satisfaction. There may be great expense in investigating part payment, and very little in proving an acknowledgment in writing; but the effect of this form of replication would be to cast upon the defendant the costs of that part on which he succeeded.”

NOTES ON RECENT STATUTES.

BANKRUPT LAW CONSOLIDATION ACT, 1849.

ACT OF BANKRUPTCY WITHIN S. 82.—NON-PAYMENT OF SUM ADMITTED ON TRADER SUMMONS.

A TRADER, on being summoned, appeared and signed an admission for part of the creditor’s demand, and as to the remainder made a deposition in writing that he verily believed he had a good defence upon the merits. The Commissioner dispensed with the bond, but the amount admitted was not paid. *Held*, that such nonpayment did not constitute an act of bankruptcy under s. 82, which provides, that “if any such trader so summoned as aforesaid shall, upon his appearance, sign an admission for part only of such demand in the form aforesaid, and shall not make a deposition,” &c., “such trader shall be deemed to have committed an act of bankruptcy on the 8th day after service of such summons, provided a petition for adjudication of bankruptcy shall be filed against such trader within two months from the filing of such affidavit.” *Oldfield v. Dodd*, 8 Exch. R. 578.

CONSTRUCTION OF WORD “NOW” IN S. 224.—DEED OF ARRANGEMENT.

Section 224 of the 12 & 13 Vict. c. 106, enacts that “every deed or memorandum of arrangement now or hereafter entered into between any such trader and his creditors, and signed by or on behalf of sixth-sevenths in number and value of those creditors whose debts amount to 10*l.* and upwards, touching such trader’s liabilities, and his release therefrom, and the distribution, inspection, conduct, management, and mode of winding up of his estate, or all or any of such matters, or any matters having reference thereto, shall (subject to the conditions hereinafter mentioned) be as effectual and obligatory in all respects upon all the creditors who shall not have signed such deed or memorandum of arrangement as if they had duly signed the same.” *Held*, that the word “now” applied to an inchoate arrangement, that is, to one which was in the course of proceeding at the time the Act passed, and not to a perfect arrangement, or one entered into and completed before the passing of the Statute. *Waugh v. Middleton*, 8 Exch. R. 352.

ENFRANCHISEMENT OF COPYHOLDS.

LICENCE TO DEMISE.

A STEP has been taken in the right direction for the Enfranchisement of Copyhold Estates, which in a free country like England, should have been abolished long ago.

Sufficient attention, however, does not seem to have been paid to one great remaining grievance. I refer to Licences to Demise, which are perpetually occasioning the greatest inconvenience in titles—a lord grants a licence to demise for 99 years from the 1st January last, the copyholder demises as from the 25th of December preceding, the consequence is, the lease is invalid, and the owner cannot, therefore, compel a specific performance on a sale, the lease not being in accordance with the licence.

I hope, therefore, some independent Member will introduce a Bill early in the next session, rendering such licences altogether unnecessary. Surely the owner ought to have power to deal with his property as he may think fit. As I by no means wish to deprive the lord of his fine of some 6d. a year, or the steward of his fees, those might be preserved, but no forfeiture should be incurred or other inconvenience sustained.

Nov. 9, 1853.

AMICUS.

ADMISSION OF SOLICITORS IN CHANCERY.

THE Master of the Rolls has appointed Monday the 21st of Nov., at the *Rolls Court, Chancery Lane*, at four in the afternoon, for swearing in Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Saturday, the 19th inst.

RESULT OF MICHAELMAS TERM EXAMINATION.

ALTHOUGH 157 Candidates had given notice of Examination for this Term, only 120 perfected their testimonials, of whom 114 attended on Tuesday last, the 15th Nov. Of these 109 were passed and five postponed.

The Examiners were the Master Turner, Mr. Keith Barnes, Mr. Ranken, Mr. W. Williams, and Mr. John Young.

It will be recollected, that by the 6th Rule of Hilary Term, 1853, the Candidates "who

shall not have attended to be examined or not have passed the Examination, or not have been admitted" this Term, may, within one week after the end of the Term, renew the notices for next Term for examination or admission.

NOTES OF THE WEEK.

PUBLIC EXAMINATION OF THE STUDENTS OF THE INNS OF COURT.

AT Lincoln's Inn Hall, on the 7th, 8th, and 9th days of November, 1853, the Council of Legal Education awarded to—

James Charles Mathew, Esq., Student of Lincoln's Inn, a Studentship of Fifty Guineas per Annum, to continue for a period of three years.

Herbert Coleridge, Esq., Student of Lincoln's Inn, a Certificate of Honour, as having passed the second best Examination.

Charles Boulnois, Esq., Student of the Middle Temple, and *A. Boyd Purcell, Esq.*, Student of the Inner Temple, Certificates that they have satisfactorily passed a Public Examination.

By order of the Council,
(Signed) EDWARD RYAN, *Chairman (pro tem.)*

Council Chamber, Lincoln's Inn,
11th November, 1853.

SOLICITORS ELECTED AS MAYORS.

Liverpool.—Mr. John Buck Lloyd.

Exeter.—Mr. John Daw.

Plymouth.—Mr. Copleston Lopes Radcliffe.

Salisbury.—Mr. John Lambert.

EXPECTED QUEEN'S COUNSEL.

It is said that Mr. Bagehawe, Mr. Shapter, and Mr. Goldsmith, are to be among the earliest additions to the list of the Equity Queen's Counsel.

SCOTCH LAW APPOINTMENTS.

R. Handyside, Esq., her Majesty's Solicitor-General for Scotland, has been appointed one of the Lords Justiciary of the Outer Court, in the room of Lord Anderson, deceased, and James Cranford, Esq., Sheriff Depute of Perthshire, has been appointed Solicitor-General for Scotland in the room of Mr. Handyside.

REGISTRAR OF ADMIRALTY COURT.

Henry Cadogan Rothery, Esq., has been appointed Registrar of the High Court of Admiralty, in the room of Henry Birchfield Swabey, Esq., resigned.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

(Coram the Lord Chancellor and Lords Justices.

Powles v. Hargreaves. Nov. 9, 1853.

BANKRUPT.—RIGHT OF CREDITORS UNDER ARRANGEMENT DEED.—BILLS OF EXCHANGE.

It appeared that the estate of P., at his death, was unable to pay his liabilities, among which were certain bills of exchange held by his bankers, accepted by him as the price of certain goods shipped from England to China by Messrs. H. These goods were sold in China, and the proceeds transmitted here in the shape of other goods on P.'s account. In the meantime H. had become bankrupt, but the fiat was annulled on their entering into an arrangement deed, which declared that the assets were to be dealt with as if the bankruptcy had not been annulled: Held, confirming the decision of Vice-Chancellor Stuart, that the proceeds of the goods must be applied in payment of the bills, and that the trustees under the deed were not entitled thereto.

It appeared that the defendants carried on business together in copartnership as merchants in this country and in China, and that goods were shipped to the Chinese firm for sale, and the proceeds were invested in other goods, which were remitted to England. These goods were to be as security for the commission and for the amount of the bills, which it was the practice to draw for the price of the goods on their customers. Fiats in bankruptcy were issued against the defendants, but were annulled on a deed of arrangement for the benefit of creditors having been entered into. In 1848, goods were consigned from China on the account of a Mr. Prescott, in return for goods sent out there, and on their being sold, the proceeds had been handed over to the trustees under the deed, whereupon the plaintiff, who represented the Liverpool Banking Company, filed this bill to have such proceeds applied, in the first place, in payment of the bills accepted by Mr. Prescott which remained in their hands unpaid. It also appeared that Mr. Prescott had died in 1847, without leaving any assets, although he had not been declared a bankrupt or insolvent. The Vice-Chancellor Stuart made a decree as prayed, whereupon this appeal was presented.

J. Russell, Daniel, and W. Hislop Clarke in support; *Wigram, Roll, and Smythe*, contra, cited *Laycock v. Johnson*, 6 Hare, 199; *Espartero Hobhouse*, 2 Deac. 291; *Espartero Perfect*, Mont. 25.

The Court said that the principle laid down by Lord Eldon in *Waring's case*, 19 Ves. 346,

governed the present case. It was clear that Mr. Prescott was unable to pay his debts, and the same equity arose as if he had been declared an insolvent, and under the defendant's arrangement deed the assets were to be dealt with as if the bankruptcy had not been annulled, and therefore the proceeds of the sale of the goods must be applied in payment of the bills held by the plaintiff, and the appeal be dismissed.

Lord Chancellor.

Inge v. Birmingham, Wolverhampton, and Stour Valley Railway Company. Nov. 5, 10, 11, 1853.

RAILWAY COMPANY.—PURCHASE OF LAND.—SPECIFIC PERFORMANCE OF AGREEMENT.

A railway company gave notice of their requiring a piece of land for their railway, and which formed a part of some held of the plaintiff under a lease granted to P. for 90 years from 1770, at a ground-rent of 32l. 13s. The plaintiff claimed 1,350l. for the land, and 150l. for severance, and after some negotiations, the company were let into possession. The plaintiff then offered to apportion the ground-rent at 3l. odd for the defendants' piece, whereupon they claimed to have purchased the whole ground-rent, and refused to complete: An appeal from Vice-Chancellor Stuart, decreeing a specific performance was dismissed with costs.

THIS was a bill for the specific performance of an agreement entered into by the defendants to purchase certain lands in Birmingham for their railway. It appeared that the land in question formed part of an estate of which the plaintiff was seised in fee, subject to a lease for 90 years, granted to a Mr. Phillips in 1770, at a ground-rent of 32l. 13s., and that on their giving notice of requiring the same, the plaintiff had claimed 1,350l. for the land, and 150l. for severance. The plaintiff, about two months afterwards, required a jury to be summoned under the Lands' Clauses' Act (8 Vict. c. 18), to assess the amount to be paid, and on the defendants' not having summoned a jury within the 21 days limited, he brought an action under s. 68, but on the company's solicitor agreeing to pay the sum demanded they were let into possession. It was then proposed to apportion their part of the ground-rent at 3l. 0s. 6d., whereupon they refused to complete, on the ground they had purchased the whole of the ground-rent. The Vice-Chancellor Stuart having decreed a specific performance, this appeal was presented.

Malins and Spooner for the plaintiff, citing *Hawkes v. Eastern Counties Railway Company*,

1 De G., M'N. & G. 737; *Burnell v. Brown*, 1 Jac. & W. 168.

The Solicitor-General, Bacon, and Speed for the defendants, referred to *Adams v. London and Blackwall Railway Company*, 2 M'N. & G. 118.

The Lord Chancellor said, the agreement was to purchase a piece of land carved out of a larger piece, held on certain conditions set forth in the abstract, and it was impossible for the company to contend they had purchased, or supposed they were purchasing, a reserved rent, which, in the proper discharge of their duties, they must have sold immediately afterwards. The apportionment offered was clearly for the benefit of both parties, and the appeal must be dismissed, with costs.

Lords Justices.

In re Cooper's Legacy. Nov. 11, 1853.

LEGACY CHARGED ON REAL ESTATE.—LAPSE, BENEFIT OF.—DEVISEES NOT HEIR-AT-LAW.

*An estate was devised in trust to raise a sum of 2,000*l.*, and after raising such sum to the testator's son for life, with remainder to his children as therein directed. 1,000*l.* part of the sum of 2,000*l.* lapsed: Held, on appeal from, and confirming the decision of Vice-Chancellor Wood, that the devisees of the estate and not the heir-at-law, were entitled to the benefit of the lapse.*

THE testator, by his will gave an estate, called Braden Farm, to trustees in trust to raise by sale or otherwise, within a year after his decease, a sum of 2,000*l.*, and after raising that sum, in trust for his son for life, and after his death the rents to be applied for the benefit of his children until they respectively attained the age of 21, when the estate was to be divided in certain proportions amongst them. It appeared that the 2,000*l.* was raised, but that as to 1,000*l.*, part thereof, the trust, which was for Mrs. Elizabeth Cooper for life, with remainder to her children, had failed by her death without issue. The question arose to whom the 1,000*l.* went, and the Vice-Chancellor Wood having, on March 2 last, held that the devisees of the Braden Farm were entitled, this appeal was presented by the heir-at-law.

Rolt and Toller in support; *Follett and Rogers*, contra; *Sandys* for the trustees.

The Lords Justices said, that if an estate was devised to a set of persons, and was subjected to a pecuniary charge for the benefit of others, but such charge did not exhaust the property, the benefit of any lapse in the charge would sink for the benefit of the devisees. The appeal would therefore be dismissed.

In re Moore. Nov. 11, 1853.

LUNATIC.—LIABILITY OF COMMITTEE FOR LOSS TO ESTATE THROUGH AGENT.

Although the committee appointed to a lunatic

are liable for the loss occasioned to the estate by the solicitor acting in the matter having possessed himself of, and applied to his own use, certain securities, and who had died insolvent,—a declaration was made, under the circumstances, that they were not to be charged with the loss.

IT appeared that a commission in lunacy had been obtained against this lunatic by his father, and the petitioners had consented to be appointed committee. The solicitor acting in the matter had possessed himself of several securities for which he had not accounted, and pending certain proceedings against him for an account instituted by the petitioners' present solicitor, he died insolvent. The Master in Lunacy reported, that it would not be of advantage to the lunatic's estate to proceed for what was due from the deceased, and this petition was now presented for the directions of the Court in reference thereto.

De Gez in support.

The Court said, that although the petitioners were liable for the acts of their agent, yet as the lunatic would not, if he recovered, insist most probably on this responsibility being enforced, a declaration would, under the circumstances, be made, that they were not to be charged with the loss, but their costs could not be allowed.

Master of the Rolls.

Cook v. Darwin. Nov. 12, 14, 1853.

SUIT BY EXECUTORS FOR PAYMENT OF PROMISSORY NOTE ALLEGED TO BE LOST.—JURISDICTION.—EVIDENCE.

The executors of a testator filed a bill for an account in regard to a promissory note given by the defendant, and for its payment, alleging it had been lost or mislaid, and proposing to give an indemnity: Held, that this Court had jurisdiction in the matter. But the bill was dismissed, with costs, on the ground the weight of evidence was clearly in support of the testator's having voluntarily given up the note as a relinquishment of the debt about three weeks before his death.

THIS bill was filed by the executors of the testator, Mr. John Hall, for an account in regard to a promissory note for 50*l.*, dated in March, 1851, and for the defendant to pay its amount, alleging it had been lost or mislaid, it not being among the testator's papers at his death, and the plaintiffs proposed to give an indemnity against any future liability. The defendant, who was the testator's son-in-law, stated in his answer, and it was corroborated by the evidence of several witnesses, that the note had been voluntarily given up to him by the testator, as a cancellation of the debt, three weeks before his death. The plaintiffs, on the contrary, proved by a witness that he had seen the note among the papers the day before the

testator's decease, when he called to look over them by his request, but parties living in the house on that day swore the witness had not so called, as they must otherwise have seen him.

J. Lloyd and Anderson for the plaintiffs; *R. Palmer and Hobhouse*, contra, on the ground, which was taken in the answer, that the plaintiffs' remedy was at law.

The Master of the Rolls said, that the Court had clearly jurisdiction in the matter, and the case was to be decided on its merits. The evidence adduced by the plaintiffs was not such as reliance could be placed on against the other witnesses, and especially since it appeared the testator was not on the day stated by the plaintiffs' witness in a state of mind to go through the business alleged, and the bill would be dismissed with costs.

Lambard v. Older and another. Nov. 14, 1853.

CREDITOR'S SUIT.—SET OFF AGAINST DEBT DUE TO ADMINISTRATORS OF DEBT DUE FROM INTESTATE.

The landlord of an intestate had taken, after his death, the farm off the hands of the administrators, and the interest and stock on the premises at a valuation, and he also purchased some furniture at a sale: Held, in a creditor's suit for the administration of the estate, that he was not entitled to set-off against such sums, a debt for which the intestate had given his acknowledgment.

THIS was a creditor's suit, for the administration of the estate of Mr. William Older who held a farm of the plaintiff, against his son and daughter, who had administered. It appeared that the plaintiff had taken the farm off the defendants' hands, the valuation of the interest and stock on the premises being 475*l.*, and that he had bought furniture at an auction to the amount of 65*l.* The plaintiff claimed to set-off against these sums a debt of 700*l.*, for which the deceased had given him an acknowledgment.

Fitz Hugh for the plaintiff; *Dickinson* for the defendants.

The Master of the Rolls said, that the plaintiff was not entitled to set-off the debt which was due to him from the intestate against the debt due to the defendants, as the legal personal representatives, and the set-off was accordingly disallowed.

Vice-Chancellor Kindersley.

Pryce v. Bury. Nov. 9, 1853.

FORECLOSURE SUIT.—MORTGAGE BY TENANT IN COMMON.—CONCURRENCE OF CO-TENANT.

The defendant, a tenant in common, had, on his brother and co-tenant raising money by deposit of the title-deeds as a collateral security, at the foot of the memorandum given, added that he joined in the deposit. The

brother died without issue: Held, that the defendant was bound to give effect to the security so far as related to the moiety, and a foreclosure was decreed as to such moiety, and the bill was dismissed with costs in respect to the claim to charge the entirety.

THE defendant, who was tenant in common in tail, with cross remainders, of a copyhold estate, had applied in 1846 to the plaintiff, on behalf of his brother and co-tenant, for a loan of 500*l.*, and a memorandum signed by the defendant's brother was given on the deposit of the deeds, stating that they were deposited with the plaintiff as a collateral security for the payment of the sum of 500*l.*, for which he had given his promissory note, and engaging to make a formal surrender of his interest in the estate to which the deed related by way of further security whenever required. The defendant added a note signed by himself, to the effect that he joined in the deposit, and a similar memorandum was given on a subsequent advance of 100*l.* On the death of the brother in 1850, without issue, the plaintiff filed this bill for a foreclosure of the entire estate. The defendant had offered to execute a mortgage of a moiety, but stating he had only signed the memorandum to enable his brother to make the deposit of the deeds.

Russell and W. W. Cooper for the plaintiff; *Glasse and De Gex* for the defendant; *Fischer* for another party.

The Vice-Chancellor said, that the defendant was bound to give effect to the security, so far as related to his brother's moiety, and decreed a foreclosure as to such moiety, dismissing the bill, in respect to charging the entirety, with costs.

Coleman v. Howard. Nov. 10, 1853.

DECREE FOR ACCOUNT.—DISMISSAL FOR WANT OF PROSECUTION.—STAY OF PROCEEDINGS.—PRACTICE.

A decree had been obtained in a suit between partners for an account, but it was not prosecuted: Held, that an order would be made to stay, if the decree was not proceeded with within three weeks.

IN this suit between partners for an account, a decree had been obtained, but it appeared that no further steps had been taken.

Selwyn, for the defendant, therefore, now moved to dismiss for want of prosecution; *Prior*, contra, on the ground that where there had been a decree the bill could not be dismissed.

The Vice-Chancellor said, that there must be an order to stay, if the decree was not proceeded with within three weeks.

Viscount Wellesley v. Lord Mornington. Nov. 11, 1853.

OFFICE OF LORD WARDEN OF FOREST.—GRANT TO HEIRS AND ASSIGNS.—VALIDITY OF ASSIGNMENT.

The office of Lord Warden of Hainault Forest was granted by James I. to Lord Oxford, his heirs and assigns: Held, that an assignment of the office was valid between the parties, where the Crown had acquiesced, and that it was therefore included in a deed of trust assigning the whole of the property to which the petitioner and his brother were entitled.

THIS was a petition for a declaration of the Court that the office of Lord Warden of Hainault Forest was included in a deed of trust dated in 1834, whereby the whole of the property to which the petitioner and his brother were entitled (with the exception of Wanstead House) was conveyed on trust to such uses as they should jointly appoint, with remainders over as therein directed in default of appointment. It appeared that the office had been granted by James the 1st to Lord Oxford, his heirs and "assigns."

Glasse in support; Druce, contra, on the ground the office was forfeited unless granted by licence from the Crown, citing 4 Inst. 315; Comyn's Dig., tit. "Officer," 193, Ca.

The Vice-Chancellor said, that the dictum in Coke must apply to cases between the holder of the office and the Crown, and that as the grant was to Lord Oxford, his heirs and assigns, and the Crown had acquiesced, the assignment was valid as between the parties.

Esparte Every. Nov. 11, 1853.

RAILWAY COMPANY.—PURCHASE OF LAND BELONGING TO TENANT IN TAIL.—COSTS OF DISENTAILING DEED.

Order made for payment out of Court of 1,000l. for drainage of estate purchased by a railway company, and of which the petitioner was tenant in tail. But held, that the company were not liable to the costs of the disentailing deed under s. 80 of the 8 Vict. c. 18, although it might be necessary for the application of the money as sought for.

THIS was a petition for the payment out of Court of a sum of 1,000l. to pay the expenses of draining an estate. It appeared that a portion of the estate in question, of which the petitioner was tenant in tail, had been taken by a railway company, and that he had executed a disentailing deed. The drainage was proposed in lieu of re-investment of the purchase-money which had been paid into Court.

Beavan, in support, submitted the company were liable to the costs of the disentailing deed, citing the 8 Vict. c. 18, s. 80, which enacts, that "it shall be lawful for the Court of Chancery" "to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; that is to say, the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the

costs of the investment of such moneys in government or real securities, and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid."

Bovill for the company, contra, as to costs.

The Vice-Chancellor, in making the order for payment as prayed, said, that the company could not be called on to pay the costs of the deed under the section cited, although it might be necessary to enable the application of the money as proposed.

Taylor v. Richardson. Nov. 12, 1853.

WILL.—CONSTRUCTION.—PROBATE GRANTED BY ECCLESIASTICAL COURT WITH BLANK.

A testator, after giving the income from his property in the funds and East India Stock to his wife for life, directed the principal of all such funds and stock to be held as follows: "I bequeath one-half part of my son," M. J., "and the other moiety in trust" for other parties. Probate was granted with the blank: Held, that the blank could not be filled in with the words "funds and stock," nor the word "of" be altered to "to," but that the residuary legatee was entitled, subject to the life estate.

THE testator, Mr. James Taylor, by his will gave the whole of the income arising from his property in the funds and in East India Stock, to his wife for life, and then proceeded, "the principal of all such funds and stock to be held as follows:—" "I bequeath one-half part of my son, Montague James, to be under his own control, and the other moiety in trust" for other parties, as therein mentioned, and there was a bequest of the residue to his son. Probate had been granted with the above blank, and this suit was instituted as to the construction of the will.

Prendergast for the plaintiff; *Nalder* for the widow; and *G. Lake Russell* for other parties. *Hunt v. Hort*, 3 Bro. Ch. C. 311; *Miller v. Travers*, 8 Bing. 244; *Allen v. Macpherson*, 1 Phill. 133, were cited.

The Vice-Chancellor said, that to fill up the blank with any given portion of the "funds and stock" would be to make, not construe, the will, nor could the word "of" be altered into "to," as the blank showed this was not the testator's intention. Although, therefore, it was clear the testator intended giving a moiety to his son, and the other moiety to other parties, yet as it did not appear of which that portion was to consist, the son was entitled under the residuary bequest to the whole, subject to the life estate of the testator's wife.

Vice-Chancellor Stuart.

Holding v. Barton. Nov. 8, 1853.

MOTION FOR DECREE.—WHERE NO AN-

SWER.—PAROL PLEA OF STATUTE OF LIMITATIONS.

In a suit by one executor against his co-executor, on motion for a decree for want of answer, the defendant set up the parol plea a bar of the Statute of Limitations: Held, that it could not be allowed; and the usual decree for an account was directed, with costs up to the hearing against the defendant.

THIS was a motion for a decree, the defendant not having put in an answer. The suit was brought by one executor against his co-executor, to recover a sum due to the testator's estate, but it appeared the debt was barred by the Statute of Limitations.

L. Mackeson for the plaintiff; *Speed*, for the defendant, set up the parol plea at the bar of the Statute.

The Vice-Chancellor said, that as the objection was not stated on the record, either by demurrer or answer, when the plaintiff might have met it, the parol plea at the bar could not be allowed, and he was entitled to a decree as prayed, with costs up to the hearing against the defendant.

Job v. Job. Nov. 9, 1853.

POWER OF APPOINTMENT BY WIDOW AMONG CHILDREN AND GRANDCHILDREN.—EXERCISE OF.—VALIDITY.

The testator, after giving the residue of his real and personal estate in trust for his widow and children, directed she should have full and complete control in the disposal of the principal moneys in such proportions as she should see fit, by will or otherwise, for the benefit of his children and grandchildren. The widow appointed, in exercise of the power, a sum to S. J., one of the daughters, another sum to S. J.'s daughter, and a third sum to trustees for the benefit of S. J. and her children. The testator left four sons and four daughters: Held, on special case that the appointments were valid.

THE testator, by his will, after giving the residue of his real and personal estate for his widow and children, directed that so long as she should continue his widow she should have full and complete control in the disposal of the principal moneys of his estate, at such times and in such proportions as she should see fit, either by will or otherwise, for the benefit of his children and grandchildren; but in the event of her marriage or death, his trustees were to divide his estate among his children, share and share alike, after deducting a sum already received by one of his sons from his share. On the testator's death there were four sons and four daughters, and his widow, by a deed, in May, 1853, appointed, in exercise of the power reserved to her by the testator, a sum of 100*l.* for one of the daughters, Sarah Jane, the wife of Mr. Melledge, a sum of 30*l.* for their daughter, Sarah Emily Mel-

ledge, and a sum of 370*l.* to trustees for the benefit of Mrs. Melledge and her children. This special case was presented for the opinion of the Court, as to the validity of these appointments.

Glasse for the trustees of the testator's will; *Malins* and *Sargent* for Mrs. Melledge and her daughter, in support; *Bacon* for the children, contra.

The following cases were cited:—*Longmore v. Broom*, 7 Ves. 124; *Thornton v. Bright*, 2 Myl. & C. 230.

The Vice-Chancellor said, that a declaration must be made in favour of the validity of the appointments.

Lovell v. Sherwin. Nov. 10, 1853.

ADMINISTRATION SUIT.—SETTLEMENT.—COVENANT.—DEBT.—SPECIALTY.

A settlor conveyed certain real and personal property by an antenuptial settlement on certain trusts, and covenanted for the trustees' quiet enjoyment. He received some of the personality. On his death, held, on appeal from the chief clerk, that the debt was specialty.

IT appeared that the testator, Mr. Hawksworth, by an antenuptial settlement, conveyed certain real and personal estate to trustees, in trust for the benefit of his wife and the children of the marriage, with the usual covenant for quiet enjoyment. The testator, however, had received a portion of the settled personality, and on his death this administration suit was instituted. The trustees claimed the repayment of the sum so received as a specialty debt, and on the chief clerk certifying it to be only a simple contract debt, this motion was made to vary his certificate.

Wigram and *Freeling* in support; *Malins* and *Metcalf*, contra; *De Gea* for the executors.

The Vice-Chancellor said, that although a mere breach of trust constituted a simple contract debt, yet where the trust arose under seal, it became a specialty debt, and in the present case the contract was under the covenant, and the certificate must be varied accordingly.

Court of Queen's Bench.

Bartlett v. Kerwood. Nov. 8, 1853.

BENEFICE.—PERPETUAL CURATE.—SEQUESTRATION FOR NON-RESIDENCE.

A monition issued in Dec., 1846, on the perpetual curate of a parish to come into residence, to which he returned, in the following January, that there was no house of residence on the benefice, and that he had a legal cause of absence, in consequence of being sentenced to two years' imprisonment, which, he alleged, was made on false evidence. An order was made in March for him to go into residence within 30 days, and in April he stated in an affidavit that he been endeavouring to obtain a writ of error from the above judgment. A sequestra-

tion issued in May, until the order to reside was complied with: Held, on special case, that the sequestration had rightly issued, and that the plaintiff was not entitled to be again heard before it issued.

THIS was a special case for the opinion of the Court, from which it appeared that the plaintiff was perpetual curate of a parish in the diocese of Hereford, and that the defendant had been appointed curate on the issue of a sequestration for non-residence. The plaintiff having been sentenced in Nov., 1846, to two years' imprisonment, a monition issued in December, under the 1 & 2 Vict. c. 106, calling on him to come into residence, to which the plaintiff, in the January following, returned that there was no house of residence on the benefice, and that he had a legal cause of absence, in consequence of the above sentence, which he alleged was made on false evidence. An order was then made in March, for the plaintiff to go into residence within 30 days, and on April 14, the plaintiff made an affidavit, stating his endeavours to obtain a writ of error from the above judgment. The sequestration then issued on May 27, reciting the monition, and other proceedings, and the order to reside and disobedience thereto, and directed a sequestration to issue in pursuance of the powers granted by the Act of Parliament, until the order to reside should be complied with.

Channell, S. L., and G. Atkinson for the plaintiff, on the ground he should have been again heard, after the order to reside and before the issue of the sequestration, to show cause why he had not obeyed the order, citing *Bonaker v. Evans*, 16 Q. B. 162.

Keating and Horn for the defendant.

The Court said, that the plaintiff had had afforded to him full opportunity of knowing with what he was charged and of being heard in his defence, before judgment had been pronounced, and as he had neglected to obey it, the sequestration had rightly issued, and the defendant was entitled to judgment.

Westoby v. Day. Nov. 9, 1853.

CUSTOM OF FOREIGN ATTACHMENT IN CITY OF LONDON.—CERTIFICATE OF RECORDER.—MOTION FOR JUDGMENT.—PRACTICE.

Held, directing the certificate of the Recorder as to the custom of London in respect of foreign attachment to be recorded, that it does not apply to and include debts, the beneficial interest in which was vested in a person other than the individual sued in the Court, and that such debts were not therefore attachable.

The motion for judgment was ordered to stand over until the other side had had notice of the certificate.

IN this case a certiorari had issued on the Recorder of the city of London, to certify the custom of foreign attachment, and he accordingly appeared in person to certify that it did not apply to and include debts, the beneficial

interest in which was vested in a person other than the individual sued in the Court, and that such debts were therefore not attachable.

The Court said, this certificate was in accordance with that given in the reign of Edw. 4,¹ and after it had been recorded, directed the motion for judgment to be entered for the plaintiff to be deferred until the other side had notice of the certificate.

Willes appeared on the motion.

Bingham v. Covas. Nov. 11, 1853.

CONTRACT FOR SALE OF CORN AS PER BILL OF LADING.—ACTION FOR DIFFERENCE IN QUANTITY.

The defendant sold to the plaintiff a cargo of corn, then in Ireland, "as it stands, of about 1,300 quarters," "the quantity to be taken as per bill of lading," to be paid for on handing over the shipping documents and bill of lading. The bill of lading stated the quantity as 1,667 quarters, which the plaintiff paid for, but on the arrival of the vessel there were only 1,614 quarters: Held, that the plaintiff was not entitled to recover in an action for the difference in quantity.

It appeared that the defendant had sold to the plaintiff a cargo of corn, per the *Prima Donna*, then at Queenstown, Ireland, "as it stands, of about 1,300 quarters," at 30s. per quarter, free on board "the quantity to be taken as per bill of lading, to be calculated a 220 quarters, equal to 100 kilos;" and payment was to be made on handing over the shipping documents and policy of insurance. The bill of lading was not then in the defendant's possession, but on his receiving it he handed it over to the plaintiff, who paid for 1,667 quarters, as stated therein. Upon the arrival of the vessel, it appeared, however, that there were only 1,614 quarters, and this action was then brought to recover back the amount overpaid, and on the trial, in the Liverpool County Court, he obtained judgment, whereupon this appeal was presented.

Milward in support; *Willes*, contra.

The Court said, the parties were in ignorance of the precise quantity of corn, but it was to be settled by the bill of lading. The vendee, therefore, took it subject to the risk of its being equal to the quantity represented by the bill of lading, being bound to suffer the loss if there were less, or entitled to the advantage, if more; and to allow the plaintiff to recover, would be to introduce a new stipulation in the contract. The appeal must be allowed, and judgment be for the defendant.

Queen's Bench Practice Court.

(Coram Crompton, J.)

Wadsworth v. Bentley. Nov. 11, 1853.

ACTION FOR SLANDER OF TRADER.—PLEA

¹ See Year-book, 22 Edw. 4, p. 30.

OF JUDGMENT IN FORMER ACTION.—
IDENTITY OF CAUSES OF ACTION.

To an action for slander spoken of the plaintiff in his character of a trader, that he had "cheated" him, and alleging special damage, the defendant pleaded judgment in a former action, and vouched the record. It appeared that the slander declared on in such action was, he had "robbed" him of 100l. : Held, the causes of action were essentially different, and on motion judgment for plaintiff.

THE declaration in this action for slander alleged that the plaintiff was a trader, and the defendant had falsely and maliciously spoken of him, in his character of a trader, certain slanderous words, namely, "thou hast cheated me," meaning in the way of his trade, and alleging special damage. The defendant pleaded the judgment in a former action for slanderous words, and vouched the record. The plaintiff replied denying there was any record.

Hall now moved for judgment, on the ground the former slanderous words were spoken generally, and not of the plaintiff as a trader, the words set forth in the declaration being, "that thief has robbed me of 100l.," &c.

Cowling in support of the plea.

The Court said, the words were so essentially different as to constitute wholly different causes of action, and judgment must be for the plaintiff.

In re ———, an attorney. Nov. 11, 1853.

ATTORNEY. — CONDUCTING PROSECUTION
WITHOUT BEING INSTRUCTED.

An attorney had instructed counsel for the prosecution on an indictment, although not instructed by the prosecutor : Held, that the remedy for such mal-practice was with the Court below, by the disallowance of the costs, and this Court, therefore, refused a rule nisi to strike the attorney off the roll or to suspend him from practice.

THIS was a motion for a rule nisi to strike an attorney off the rolls, or to suspend him from practice. It appeared that two persons were committed for trial by Mr. Hardwick, on May 31 last, at the ensuing Middlesex Sessions, and that an inspector of police was bound over to appear to prefer and prosecute the bill of indictment, and on June 21, the prisoners were tried and found guilty. On the trial, counsel appeared for the prosecution, and on the cross-examination on behalf of the prisoners it appeared the inspector had given no instructions to any attorney, and on the conclusion of the case, the counsel for the prosecution stated, he received his instructions from Mr. ———, the above attorney, who had frequently instructed him on previous occasions. The assistant Judge thereupon directed a statement of facts to be brought before the notice of the Incorporated Law Society, and this motion was thereupon made.

James P. Wilde in support.

The Court said, that although the attorney had been guilty of irregularity in intruding himself in the case, it was not so grave a matter as to call for the interference of the Court in so serious a way as that sought. Irregularities of this kind could be easily kept in order by the Courts in which they occurred, by the disallowance of the costs; although the attorney had been very irregular, and such proceedings should in every way be discouraged, the matter was hardly of sufficient gravity to call for interference in the very severe manner as prayed, and the rule must be refused.

Court of Common Pleas.

Tupper, app., v. Newton, resp. Nov. 11, 1853.

COMMISSIONER UNDER LOCAL IMPROVEMENT ACT.—QUALIFICATION, EVIDENCE OF.—COUNTY COURT.—APPEAL.

A plaintiff was brought in the County Court to recover the penalty under the 3 & 4 Wm. 4, c. cv., s. 11 (Canterbury Local Improvement Act), from the defendant, for having acted as a Commissioner thereunder without having been duly qualified. On the trial, he proved he was duly qualified, but not that he had taken the oath of qualification. An appeal was dismissed, with costs, from the Judge of the Canterbury County Court, deciding the evidence given was an answer to the action.

THIS was an action in the Canterbury County Court to recover the sum of 50l. by way of penalty from the defendant for having acted as Commissioner under a local improvement act (3 & 4 Wm. 4, c. cv., s. 11), without having been duly qualified. It appeared in evidence on the trial, that the defendant was qualified to act, but the plaintiff urged he should also prove he had taken the oath of qualification, as the local act rendered those liable to the penalty who had not taken the oath. The learned Judge, however, ruled the contrary, and the defendant obtained judgment, whereupon this appeal was presented.

Channell, S. L., in support; Hayes, contra.

The Court said, the plaintiff was brought against the defendant for acting without being duly qualified, and not that he had not taken the oath of being qualified, and the appeal must therefore be dismissed, with costs.

Graham v. Furber. Nov. 10, 11, 1853.

BANKRUPT.—GOODS IN POSSESSION OF.—RIGHT OF OWNERS THERETO.—NOTICE OF BANKRUPTCY.

Held, that the true owners of goods in the possession of a person having committed an act of bankruptcy, are entitled thereto, provided they do not know an act of bankruptcy has been committed.

Therefore, where the defendant had, in contemplation of a bankruptcy, taken possession of goods with which he had supplied the bankrupt, but without notice of the commission of any act of bankruptcy, the as-

signees were held not entitled to recover under the 12 & 13 Vict. c. 106, s. 125.

THIS action was brought by the assignee of a bankrupt, to recover from the defendant the value of certain goods which were in the order and disposition of the bankrupt at the time of his committing the act of bankruptcy. It appeared the defendant had in contemplation that he would be bankrupt, taken possession of the goods with which he supplied him, and sold the same, but without notice that an act of bankruptcy had been committed.

By the 12 & 13 Vict. c. 106, s. 125, it is enacted, that goods in the possession, order, or disposition of the bankrupt, shall be deemed his property; and by s. 133, that "all contracts, dealings, and transactions by and with any bankrupt really and *bona fide* made and entered into before the date of the fiat or the filing of the petition," "and all executions and attachments against the goods and chattels of any bankrupt *bona fide* executed and levied by seizure and sale before the date of the fiat or the filing of such petition, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, provided the person" "had not at the time" "notice of any prior act of bankruptcy."

Bovill for the plaintiff; *Willes* for the defendant.

Ex parte Smith, in re Styan, 2 Mont. Deac. & De G. 213; *Pariente v. Pennell*, 2 Moo. & Rob. 517; *Young v. Hope*, 2 Exch. R. 105, were cited.

The Court said, that the true owners of goods in possession of a person who had committed an act of bankruptcy were entitled to them, provided they did not know an act of bankruptcy had been committed, and that the defendant was therefore entitled to judgment.

Court of Exchequer.

In re Dearden. Nov. 8, 1853.

TAXATION OF ATTORNEY'S BILL OF COSTS.
— STATEMENT OF AMOUNT. — PAYMENT UNDER PRESSURE.

Held, that it is necessary on motion for a rule to refer the bill of costs of an attorney to taxation, to state the amount of such bill, and a rule was refused although moved for on the ground of payment under pressure, where it did not appear what the amount of the bill was.

THIS was a motion for a rule nisi to set aside the order of *Martin, B.*, for the taxation of the bill of costs of Mr. Dearden, against his client, Mr. Smith, and which had been paid upon Mr. Dearden's refusing to hand over the papers to another attorney, appointed in his stead, without payment.

Hill in support, referred to the 6 & 7 Vict. c. 73, s. 41; and citing *In re Harrison*, 10 Beav. 57.

The Court said, that as it did not appear what the amount of the bill was, the rule would be refused, as that fact was a most important circumstance to govern the discretion of the

Court, since the costs of the rule, if contested, would amount to 15*l.* or 20*l.*

Court of Exchequer Chamber.

Andrews v. Chapman. Nov. 10, 1853.

LIBEL, ACTION FOR.—PLEA OF JUSTIFICATION.—APPEAL.

The defendant, in an action of libel, obtained judgment on a special plea of justification: Held, that the plaintiff, having joined issue instead of demurring, could not object on appeal that the plea was bad.

THIS was a writ of error from the Court of Queen's Bench, in this action for a libel, to which the defendant had pleaded not guilty and a justification. The defendant obtained judgment on the latter plea.

Carrington in support, on the ground the plea was bad.

The Court said, that as the plaintiff had joined issue instead of demurring to the plea, the judgment of the Court below must be affirmed.

Court of Criminal Appeal.

Regina v. Snelling. Nov. 12, 1853.

**FORGED ORDER FOR PAYMENT OF MONEY.
—OMISSION OF PAYEE'S NAMES.**

A prisoner was convicted under the 11 Geo. 4, and 1 Wm. 4, c. 66, s. 3, for uttering the following order for payment of money:—"Hotton, March 31. Sirs,—Please to pay beariss, Mrs. Smart, the sum of eighth hundred & 50, 4£* ten shillings for me. James Rumsey;" Held, confirming the conviction, that the omission to address the order was immaterial, as it appeared in the evidence the word "Sirs" was intended for the bankers to whom it was presented.*

THIS was a question reserved under the 11 & 12 Vict. c. 73, s. 1. It appeared that the prisoner had been indicted for uttering the following forged order for payment of money:—"Hotton, March 31. Sirs,—Please to pay beariss, Mrs. Smart, the sum of eighth hundred & 50, 4*£* ten shillings for me. James Rumsey;" and it was directed on the outside "Mrs. Smart." On the trial, at the East Suffolk Assizes, before *Jervis, L. C. J.*, it was objected, that it did not amount to an order for the payment of money under the 11 Geo. 4, and 1 Wm. 4, c. 66, s. 3, not being addressed to the parties to pay it.

Dasent, for the prisoner, cited *Res v. Clinch*, 1 Leach, 540; *Worledge* for the prosecution.

The Court said, that as there was evidence to show the word "Sirs" was intended by the prisoner to mean the bankers to whom the order had been presented, the mere omission of its being addressed to them would not prevent it from being an order for the payment of money, and the conviction must be affirmed.¹

¹ And see *Regina v. Rogers*, 9 Car. & P. 41.

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SATURDAY, NOVEMBER 26, 1853.  
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COMMISSIONS PAID AND UNPAID.

DUTIES OF THE LORD CHANCELLOR.

THIS is "the Age of" Commissions. We have already directed attention to the unprecedented number of Commissions in active operation for the purpose of inquiring into and reporting upon the state of the Law. We might also refer to the numerous Commissions issued, at the instance of the House of Commons, to examine into the bribery and corruption, there is too much reason to suppose, prevailing in many cities and boroughs in connexion with the exercise of the elective franchise. To these we may add, the Commissions appointed to inquire into the discipline and management of the public gaols, and to the sums levied upon shipping in certain of the outports.

The value, as well as the expense, of the Election Commissions will be better appreciated, when the Government scheme for purifying and improving the representative system is explained and understood, and the estimates, to be laid before Parliament, disclose the cost to the country consequent upon the remarkable, and too frequently discreditable, revelations arising out of the last general election. The delicate task of probing and exposing the unsoundness of those electoral constituencies which were supposed by Parliamentary Committees of the House of Commons, to have attained an infamous pre-eminence by the indulgence of extensive and systematic impurity and corruption, was intrusted, we believe in every instance, exclusively to members of the Bar. It would be premature to consider, whether the gentlemen selected by parliamentary influence to conduct those inquiries, have uniformly performed their duty judiciously and efficiently. Indeed, considering the number of Commissions,

and the mode in which the appointments were made, it can hardly excite surprise to find an occasional instance of miscarriage, or that some of those inquiries have proved wholly abortive. Whatever may be the amount of benefit conferred upon the Public by the investigations which have taken place, those engaged upon the Bribery Commissions have, at all events, the consolation of feeling that, in *one sense*, their labours have not been thrown away, and that the Long Vacation has not been idly or *unprofitably* passed.

In this respect, the Law Commissions, issued upon the responsibility of the Lord Chancellor, and the Commissions for inquiry into the exercise of the elective franchise in the accused boroughs, are placed upon a totally different footing. The gentlemen engaged under Lord Cranworth, in his favourite project of consolidating the Statutes are to be compensated for the entire devotion of their time to this little-inviting task, it seems, upon what appears to be a niggardly scale, but with this solitary exception, all the Commissions issued by Government, with a view to amending the law, are *unpaid*; whilst the Commissioners appointed to inquire into and record the venality of the borough electors, are to be paid by a sum multiplied by the number of days employed upon such inquiry, and which amount in the aggregate to what it is not intended to describe as extravagant, but which, it may be fairly assumed, compensates at a reasonable rate those appointed Commissioners—and many of whom belong to the Junior Bar—for the devotion of their time and ability to the public service.

Upon looking through the lists submitted to our readers (*ante*, p. 1), of those composing the various Commissions now in existence for inquiry into large branches of

the law, it cannot be overlooked, that, in addition to the official Commissioners, the lists include the names of many in active practice, and with leading business in the general departments of the law. It is unreasonable, and not quite just, to expect, that gentlemen who derive no portion of their incomes from the State, are to expend that which is equivalent to money—their time—in the public service gratuitously. Whatever is expected or desired, this will not be done. The interests of clients cannot, and ought not, to be sacrificed, and the practical result has been, and will be, to leave the inquiries and reports to be conducted and framed by a few members, or it may be a single member, of the Commission, and to share the honour, or the responsibility of being included in it. In effect, this is to deceive the public, who are justified in concluding, that those whose names are affixed to a report have exercised their individual judgments upon the matter of it, whilst they too frequently take both the facts and the conclusions upon trust.

Two remedies suggest themselves for the evil pointed out. The opinion of a counsel, given without a fee, is proverbially of little value, and the report of an unpaid Commissioner may be included in the same category. If the public require the opinion and experience of any member of the Profession, upon any branch of the law with which he is supposed to be peculiarly conversant and familiar, let the individual so appealed to be paid by the Public, as he would be by any private client for the benefit of his advice and experience; and his opinions and suggestions will then be given under a due sense of responsibility. All these Law Commissions have been issued upon the recommendation and with the assent of the Lord Chancellor. Their suggestions require his lordship's sanction and approval before they are submitted to the Legislature and take the incipient form of laws. Why should not the Lord Chancellor attend and preside over the meetings of the various Commissions issued for the improvement of the law? There was a time when the duties of the Chancellor were of so multiplied and onerous a nature, that it required extraordinary capacity and diligence to discharge the duties of the office—ministerial, political, and judicial.

This is all changed! The Act 14 & 15 Vict. c. 83, under which the Lords Justices were appointed, left the Lord Chancellor with judicial duties of the most limited character. During that large portion of

the year when Parliament is not sitting, and his lordship is not called upon to preside in the House of Lords, he has abundance of leisure, and it could not be better or more usefully employed, than in discharging the functions of a *Minister of Justice*, and superintending the deliberations of those learned and experienced persons nominated and assembled under his authority, to suggest how the law may be best altered and improved. Such is the veneration and respect with which the office is regarded, amongst all classes, that we are satisfied the presence of the Chancellor at a meeting of Commissioners would afford the best guarantee to the public that the matter discussed was duly considered, and that the judgment of every individual taking part in the deliberation was conscientiously exercised.

Without undervaluing the labours and recommendations of Commissions past or existing, we concur in the apprehension generally entertained, that the multiplication of Law Commissions is a convenient device of those in authority to shirk the performance of the duties which legitimately devolve upon them, and that, although it may temporarily divert public expectation, it cannot fail ultimately to produce disappointment and dissatisfaction.

LAW OF ATTORNEYS AND SOLICITORS.

TAXATION OF BILL OF COSTS.—ORDER OF COURSE.—SUPPRESSION OF FACTS.

A SOLICITOR delivered his bill of costs for business transacted for his clients, who took out the usual summons in the Court of Queen's Bench for a taxation, upon which an order was made for such taxation, on payment of 500*l.* within a fortnight to the solicitor, without prejudice. The 500*l.* was not paid, and the proceedings in the Queen's Bench were abandoned, and a summons was taken out before Mr. Baron Platt, in the Exchequer, but which was dismissed on the ground of the previous order, and the solicitor then brought an action in debt in the Common Pleas for the amount of his bills.

An order of course had afterwards been obtained at the Rolls for the taxation of the bills, and on the same day judgment was obtained by default for want of plea in the action. A motion was then made to discharge the order.

The grounds of the application were two—

fold:—1st, that a judgment at law had been obtained for the amount of the bill at the time when the order for taxation was served; and 2ndly, that two applications had been made to Courts of Common Law for the same purpose, one of which had been granted on terms, but abandoned, and the other refused; and that these ought to have been stated on the application for the order of course.

The *Master of the Rolls*, in his judgment, said:—"The rules and principles upon which orders of course are to be obtained appear originally to have been a little unsettled, but they were finally settled by Lord Langdale; and I have adopted his rule. The rule he laid down was this:—It is incumbent on a party applying for an order of course to pursue the same course as he would if he were applying for an *ex parte* injunction. He must state every matter which can be material, to enable the officer to judge whether the case is really a proper one for granting an order of course. If he omit to do so, and there are special matters affecting his right to an order of course which are suppressed, the Court will not stay to inquire whether he would be entitled to the same order upon a special application, but will limit the inquiry to whether the matter omitted were of sufficient moment and importance as to require grave consideration or discussion. If so, the officer would not have granted the order of course; it would have been necessary to make a special application, and the Court would then have decided in the presence of both parties on the propriety of taxing the bill. Where matters of that description have been suppressed, and the applicant has thereby obtained an order of course, which he could not have obtained except by that suppression, the Court will not allow the order to stand, even although it may appear, that on a special application he would be entitled to the same order. I have so decided myself on more than one occasion, and in so doing I have followed Lord Langdale, being satisfied that this is the proper rule that ought to prevail.

I have therefore to consider, whether the facts suppressed were of sufficient moment and importance to warrant the Court in saying, that they ought to have been gravely discussed. The first is the fact of a judgment having been obtained; and I am of opinion, that having been obtained in the manner it was, it was not a matter of sufficient importance to make it necessary

(though it might be proper) to mention it; for I have no doubt that the officer, notwithstanding such a judgment, would have granted the order of course, for the Act of Parliament is precise on the point. It says (s. 37), there shall be an order of course to tax within twelve months after the delivery of the bill; and then it states, "provided always, that no such reference shall be directed after a verdict shall have been obtained, or a writ of inquiry executed, in any action for the recovery of the demand of such attorney or solicitor:" consequently, the Act of Parliament provides, that this order of course shall go in every case where there has not been either a verdict or a writ of inquiry. * * * I think that it was not intended by the Statute, that a judgment should bar the right to taxation where there had been no inquiry into the amount of the debt, as there would have been in the case of a verdict, or in the case of a writ of inquiry executed, which is, I think what the clause meant to refer to by the exceptions so introduced into the proviso.

With respect to the other part of the case, I am of opinion that the circumstances were material, and ought to have been stated. I do not exactly understand upon what grounds Mr. Justice Coleridge ordered the taxation only on payment of 500*l.* Undoubtedly, if there were nothing else in the matter prior to obtaining that order, the clients might have come here and obtained a taxation of Mr. Gedye's bill. * * * I am satisfied, that these matters were of sufficient importance to require them to be mentioned to the officer. It should have been stated to him, that an application had been made to a Court of competent jurisdiction to tax these bills, which had been refused. If that had been mentioned, the officer would not have granted the order of course to tax the bill, but a special application to the Court would have been necessary. On that ground, therefore, without in the least degree prejudicing any special application that may be made to tax these bills I am of opinion that this order of course cannot stand, and that it must be discharged with costs." *In re Gedye*, 15 Beav. 254.

THE MASTER OF THE ROLLS.— JUDICIAL PATRONAGE.

CLERK OF ENROLMENTS IN CHANCERY.

SOME objection has been taken by a writer in *The Morning Chronicle* (not, we think, the Editor of that Journal), to the recent appointment made by the Master of the Rolls, occasioned by a vacancy in the Office of Clerk of Enrolments in Chancery. It appears that the objection is not raised to the fitness or competency of the officer appointed, but to the amount of his salary, as being too much for the duties performed. It will be recollected, that the officer selected was for several years an eminent solicitor, and afterwards practised as a Chancery Barrister. Thus his qualifications were amply proved. The critic of the *Chronicle* assumes, that the duties are easily performed, but he loses sight of the responsibility of the officer in regard to the due entries on, and the preservation of, the Records of the Court, and of the necessity of his constant attendance. The Master of the Rolls also may call on the Enrolment Clerk to perform such other business connected with the Court of Chancery as may from time to time be directed, with the sanction of the Lord Chancellor.

The conclusive answer to the objection, however, is, that the salary is fixed by the Act of Parliament of the 5 & 6 Vict. c. 103, s. 3, which passed on the 10th Aug. 1842. The office is in the gift of the Master of the Rolls, and is held "during good behaviour;" but his Honour has no power over the amount of the salary, which has been fixed by the Legislature.

The writer in the *Chronicle* is also dissatisfied, that not only the Master of the Rolls but other Judges do not carry out the reforms which are required or expected in their several Courts. Reform, however, to be safe, is proceeding rapidly enough; and it ought not to surprise any reasonable person that even eminent law reformers, when seated on the Judicial Bench, take sometimes a different view from that either of the hustings or the House of Commons. The Judge is responsible for the prompt and efficient discharge of the duties of the several departments of his Court; and his obligations, as the head of the Court, in the due administration of Justice, impose the careful consideration of details which are often overlooked by the popular reformer. It is not improbable, that if querulous political writers were placed in a judicial and

responsible position, they would act just in the same manner as the learned Judges of whom they complain.

INCORPORATED LAW SOCIETY.

MR. WILSON'S INTRODUCTORY LECTURE ON CONVEYANCING.

MR. WILSON, the eminent Conveyancing Barrister, commenced his course of Lectures in the Hall of the Incorporated Law Society, on Friday, the 4th November.

He stated that the object of the series of Lectures which, at the request of the Council of the Incorporated Law Society, he should have the honour of delivering in that Hall, would be to present, so far as the time should admit, an elementary outline of the Law of England upon Real Property,—that is to say, upon one of the two great divisions into which, by that law, property, generally was distributed.

The primary and more immediate object of the Lectures would seem to point naturally to an elementary treatment of the subject in hand.

But as they were, in truth, a means to a particular end, that end being the actual practice of this branch of the Law as a Profession, it would be desirable to have regard to the propriety of viewing the subject, as far as opportunity might allow under its twofold aspect of a science and an art.

Under its aspect of a science as involving the investigation of principles—under that of an art, as deducing and propounding a system of rules for practical operation.

It formed no part of his design to enter upon the subject of the philosophy of law generally, nor upon that of the policy of the law of England in particular: nor was it within the scope of his plan to point out or discuss what might be deemed imperfections or anomalies in our system of property law, nor to suggest improvements or amendments.

What he proposed principally to accomplish was, to exhibit in as simple a form as the subject would admit of, the principles of real property law, so far, at least, as respected its broader and more prominent features, having regard to the application of that branch of law to the purposes of practice. Many single topics of real property law were the subject of voluminous treatises, and the range of the subject was altogether so ample, and its topics so multifarious and varied, that an attempt to compress more than what he proposed into the compass of the number of Lectures to which he was limited, would probably be attended with little practical benefit to those whom he was addressing.

But although an orderly and intelligible exhibition of the principles of the science could not fail to be attended with advantage to the student, yet, in order to derive any large measure of real and permanent benefit from the

exposition of the subject which he was about to attempt, it would be necessary, essentially necessary for those who proposed to adopt the law as a profession, to fill up in detail, the outline upon which he was about to enter, by a systematic course of reading in the works of those text-writers, whose labours had been devoted to the investigation and illustration of the topics to which he should address himself, and it would be very desirable that such a course of reading should be concurrent.

The study of the Law of Real Property had not unfrequently been represented as attended with difficulties, which no amount of ardour or perseverance could surmount.

It was very true that the system was one characterised by much intricacy and refinement, and abounding in nice and artificial distinctions, but (to use language which had been applied to the subject of mental science) 'we are persuaded that the Real Property Law of this country wears an air of far more hopeless and inaccessible mystery than rightfully belongs to it.'

The complexity of the system had been increased of late years by this circumstance, that the result of the passing of several of the modern Acts for the amendment of this branch of Law had been to bring into operation two distinct classes of rules or doctrines, as regards several of the more important branches of the system:—for instance, as respects wills,—descent or inheritance,—the bar of entails,—dower, &c., with each of which it was essential for the practising lawyer to be conversant; and the necessity for this would not cease until, perhaps, the lapse of something like half a century from this time.

That which lay at the root of the discouragement and embarrassment, not to say the disgust, which, it was to be feared, had been too often experienced by the law student, was a loose, desultory, and unconnected course of reading. It was only by a methodical and systematic course of study, pursued with earnestness, resolution, and assiduity, and in which it should be an inflexible rule, never to pass over the language of an author without thoroughly and entirely comprehending its meaning, that the difficulties could be overcome, and excellence attained.

The observation could not be too emphatically repeated, and it applied with especial force to the earlier period of study, when the instruction was of an elementary character, that it was a point of the last importance to understand thoroughly and entirely whatever was read;—to leave nothing half comprehended;—to read and to re-read everything which, in the first instance, might be obscure or ambiguous, until it should become plain, clear, and intelligible.

The subject with which conveyancing had to deal was 'Property,'—in other words, those things which were susceptible of ownership or dominion,—their enjoyment,—transfer by act of law and act of the party,—by instrument *inter vivos*, and by will,—their pledge

and settlement,—and the various rights and obligations thence arising, including the bar or extinguishment of rights or titles to property by inconsistent possession and non-claim, under what were termed 'the Statutes of Limitation,' and the construction of written documents.

Property, by law, had been distributed into distinct classes. With reference to the principles of classification, they could not fail to observe, that there was one subject of property,—that was to say 'Land,'—which, by certain attributes or peculiarities, was distinguished, essentially, from all others.

Those characteristics were, its immovability and its indestructibility or permanence. To these might be added, its capacity of continuous identification to an extent which other descriptions of property did not admit of.

The most obvious, and most natural, division of property would seem, therefore, to be one based upon the attributes alluded to; and accordingly, the earliest classification appeared to have been that which distributed property into two kinds,—that was to say, into 'movable' and 'immovable'; and although those terms had, in later times, been replaced by others, they still laid at the root of modern classification.

At this day the grand and primary division of property, according to legal and technical phraseology, was into 'real' and 'personal.'

This classification had its origin rather in the nature of the procedure by which rights and obligations connected with, or arising out of, disputed and conflicting claims to the ownership of property, were put in train for adjudication than to any intrinsic characteristics of the subject itself:—but, under one or other of those divisions, every description of property would be found to range itself.

By analogy, probably, to the technical division of actions or remedies into real, personal, and mixed, expressions would sometimes be met with, which might seem to imply a three-fold division of property. He alluded to the phrase 'property real, personal, and mixed.'

The expression 'mixed property' or 'mixed estate' was, however, rather a popular, than a technical or scientific one.

It was, sometimes, and, indeed, not unsuitably, applied to those subjects which, though clearly comprehended within one or other of the grand divisions already mentioned, viz., 'real and personal,' partook of the nature of each.

For instance, the title-deeds to land held for an estate of inheritance were sometimes referred to as 'mixed property'—as being, in themselves, movables or chattels, but being, in respect of their mode of transmission (as accessories to the land) in the nature of realty.

So the term 'mixed estate' was not unfrequently applied to that description of property which, within the Statute of the 9 Geo. 2, c. 36 (commonly but inaccurately termed the Mortmain Act), constituted an interest in land so as to be incapable of testamentary disposal.

sition for a charitable purpose—such as money secured by mortgage or charge upon land, unpaid purchase-money, for which a vendor of land might retain an equitable lien upon the land sold, in contra-distinction to what was termed 'pure personalty.'

So, upon the same principle, a perpetual personal annuity (as distinguished from a rent-charge which was real estate), that was to say, a yearly sum, the payment of which was secured to B. and his heirs for ever by the bond or covenant of A. binding his heirs, was sometimes termed 'mixed property,' being, as to the subject, money or personal estate, and as respected its transmissibility, an hereditament, devolving by heritable succession to the real representative.

Indeed, the term 'mixed estate' might not inaptly be further extended, so as to denote land held for a term of years, that being on the one hand, as respected the subject, land or realty, and on the other, as to the interest in that subject, a chattel interest, or personalty, as would afterwards be more particularly explained and illustrated.

The term 'mixed estate' was, however, as already observed, one rather of a popular than of a technical or scientific character, and, for all practical purposes, it would suffice to adhere to the twofold division of property already mentioned,—that was to say, 'realty and personalty,' or 'real estate' and 'personal estate,'—and afterwards to distribute the two grand and primary classes into such subordinate divisions as might be necessary for the more apt and convenient illustration of particular rules or principles of law.

Viewing, then 'property' as divided into—firstly, 'real estate;' secondly, 'personal estate;' how were the two classes to be distinguished or defined?

It was difficult, if not impossible, to give, within a reasonable compass of words, a definition which should express the essential, or even the leading, characteristics of each or of either.

Text writers commonly defined or explained the terms by reference to some leading attribute of the subject or thing, as being, for instance, movable or immovable. Land and its adjuncts, as being immovable, fixed, permanent, enduring—constituting 'real property.'

Money, money in the funds, furniture, debts, cattle, and timber, and agricultural produce, when severed, as being moveable, fluctuating, perishable—constituting 'personal estate' or 'personalty.'

These, however, were, perhaps, rather of the nature of illustrations or examples, than of definitions, and they were imperfect, inasmuch as, on the one hand, there were certain interests in the fixed and immovable subject land, which were in law 'personal estate,' such as a leasehold interest, commonly called 'a term of years,' already noticed; and, on the other hand, there was the instance of the perpetual periodical money payment, not issuing

out of land, which was a heritable subject, as already also noticed.

It was, however, essential to be able to distinguish accurately, one class of property from the other, each being regulated by its own particular system of jurisprudence; and it would be found in the sequel that to effect this discrimination regard must be had, not only to the subject or thing itself, but also to the nature and extent or degree of the ownership or interest in such subject or thing.

Independently of certain distinctions and peculiarities in the mode of transfer, *inter vivos*, between the two species of property,—and independently, also, of a remarkable distinction which, until a comparatively recent period, existed between one and the other, in the mode of testamentary or posthumous disposition,—and independently, further, of certain distinctions between the two in respect of the order and extent of their liability to satisfy the debts and obligations of owners, and more especially of deceased owners,—the characteristic and essential distinction between the two species of property would seem to consist in this, that on the death of the owner intestate, that was to say, without having made an effectual testamentary disposition, there occurred a separation or division of title and ownership. The two flowed in separate and distinct channels,—the real estate devolving upon the 'heir' or real representative, by the act or operation of law termed 'descent,' which implied an heritable quality; and the personalty vesting, not technically by 'descent,' but by what might be termed "transmission" in the personal representative, that was to say, in the 'executor,' if by his will the owner had appointed one who accepted the office, and if not, in a functionary denominated the 'administrator,' constituted by the act of the Ecclesiastical Court.

Real estate might, therefore, be defined to be that which on the death of an intestate owner vested, by descent, or heritable succession in his heir-at-law, or *real* representative.

Personal estate, that which on the death of the owner, whether testate or intestate, vested, at law, in, or was transmitted to his *personal* representative, being either an executor or administrator, as already explained.

And there was this further observable difference between real and personal estate, that if the former were devised by the will of the owner to a party not being his heir-at-law, the devisee took the subject of the gift immediately and at once, on the decease of the testator, *by force of the will itself* and not in any sense through or under the heir, or by virtue of any assent by him. Whereas in the case of a testamentary disposition of personal estate (technically termed 'a bequest'), whether specific or general, particular or residuary, the law in the first instance uniformly vested the subject of the gift in the executor; and in order to divest this legal title from him and effect its transfer to the legatee, a further act was necessary, viz., the assent of the executor to the legacy or bequest, until which assent, either expressly and

formally given, or presumed or implied from circumstances, the legal right and title to the subject of the gift remained in the executor, commonly termed 'the legal personal representative.'

Whilst, therefore, it was a positive rule of law that the personal estate of a deceased owner, however given by his will, vested, in the first instance, on his decease, in his legal personal representative (executor or administrator—as the case might be), and so remained until his title was shifted, either by sale or other deposition, or by assent to the bequest, there was no analogous rule or principle applicable to real estate, as between heir and devisee.

This peculiar rule, in respect to the transmission of the personal estate of a deceased owner flowed from another rule or principle of law which imposed upon the legal personal representative (as distinguished from the legatee or beneficiary) the obligation of discharging, to the extent of the personal estate of the deceased (technically termed his 'assets'), all debts and demands outstanding against him, a duty which could not be adequately fulfilled, unless the title to and control over, such personal estate was vested in the executor or administrator, and the right of the legatee was held to be subordinate to such title and control.

As regarded *personal estate* therefore the executor or administrator, as the case might be, was regarded in law as the universal successor in the first instance.

Real estate was further distinguished from personalty in general by the circumstance of its being held by title.

In cases of mere personalty, not being chattel interest in land, the fact of possession alone ordinarily implied an absolute ownership.

On the purchase, for instance, of cattle, furniture, or other personal chattels, no inquiry was usually made (nor was it in general necessary that it should be) into the title of the party assuming to sell.

Whereas on the sale of real estate no prudent purchaser omitted to investigate the title-deed of the seller for a period of something like 60 years retrospectively from the time of the sale, requiring for that purpose, the title to be formally deduced and verified by documentary and other evidence.

The necessity for this was obvious when it was considered that the mere fact of the possession of land did not import an absolute title to, or ownership of, the fee simple and inheritance in such land.

In the majority of instances, the interest of the individual actually in possession was merely that of a tenancy for years or from year to year; and, where that was not the case, the owner might be mere tenant for life or in tail, or might be a husband seised in right of his wife, or as tenant by the curtesy; and as parties so circumstanced could not transfer to a purchaser a greater extent of ownership than that which they possessed, the risk which a purchaser would incur in completing his purchase without investigating the title of the seller was

at once obvious; and the necessity for such an investigation of title on behalf of a *mortgagee*, upon advancing money upon landed security, was still more cogent, as a mortgagee, unlike a purchaser, did not, at least in the first instance, enter into possession or receipt of the rents of the land.

In legal phraseology, real estate comprehended lands, tenements, and hereditaments.

According to its strict legal import, when used in instruments of record and in the pleadings in real actions under the old system, the term 'land' signified arable ground only. Thus, in fines and common recoveries, a distinction was always taken between 'land' as signifying 'arable land' and other descriptions of land, the language being so many acres of land, so many acres of meadow, so many acres of pasture, so many acres of wood, &c.; but, in its ordinary legal signification, the term 'land' comprehended, not only every description of ground or soil, whatever might be the particular nature or mode of cultivation, but also everything attached to it, such as houses, trees, &c., as well as everything lying beneath its surface, such as mines and minerals.

This was the construction of the term in deeds and wills, unless there were something in the context to modify or control it; and therefore it could not be doubted but that a conveyance or devise of all a man's land in *A.* would comprehend and pass the whole of his lands there, though they should consist of arable, meadow, pasture, and wood land.

But though this was the general rule, the meaning of the term 'land' might, of course, be qualified or restricted by the context of the instrument: for instance, if a testator, having lands and houses in the parish of Dale, should devise all his *lands* in Dale to *A.*, and all his *houses* in Dale to *B.*, there it would obviously contravene the intention of the testator that the word 'lands' should comprehend and pass houses, and hence it would, in construction, be interpreted in a limited sense.

So similar instances might be put as to mines, timber, &c. This led to the remark, that laxity or want of precision in this description of parcels in deeds and wills could not be too cautiously avoided. A glance at the published reports would show the amount of litigation which had been occasioned by want of attention to this particular.

The word 'tenement' was of more comprehensive import than the word 'land.'

It was, however, difficult to affirm that it had any very precise technical meaning.

In popular language, and in relation, more especially, to copyhold 'property,' it was very generally used as synonymous with 'habitable building,' but, in its legal signification, it would seem to comprehend not only 'land' in its literal sense, but every subject of realty which might be affirmed to lie in tenure, or to be the subject of feudal holding. Some text writers, indeed, used the term in a still more extensive sense, as including, not only land, or subjects lying

in tenure, but every modification of right accruing from, or arising out of, land to which the law attributed a substantive, though incorporeal, existence.

And that the meaning of the term was not restricted, in legal construction, either to land or to subjects susceptible of the feudal holding, was clear from this circumstance, that it was the only term used in the *Statute de donis conditionalibus* as descriptive of those subjects in which an estate tail could be created or limited, and that estate was indisputably applicable, not only to lands or corporeal hereditaments, but to those of an incorporeal quality, such as rents, tithes, advowsons, &c., that was to say, to subjects not lying in tenure.

The mention of tenure and the feudal system suggested the propriety of explaining some few, at least, of the leading features of that system, forming, as it did, the groundwork of much of the Law of Real Property in this country.

The system of feuds, according to the views of the best historical writers, took its rise with those warlike but semi-barbarous northern tribes, who, on the fall of the Roman empire over-ran the greater portion of Europe.

It was a part, and indeed the main part, of that machinery by which the individuals of an entire military tribe were mutually linked and bound, under ties of reciprocal interest, for the maintenance and efficient defence of a district or country acquired by conquest.

The sovereign or leader of the victorious army in the exultation of success, and partly as a reward, partly as a stimulus, to his followers, allotted large portions of the conquered territory to his military officers of the highest rank, and portions of such allotments were by them dealt out in smaller parcels to their subordinates, and so through a successive series.

The allotments or grants of land thus made were denominated *feoda*, that is to say feuds or fees.

These donations, however, were not voluntary or gratuitous: they were made expressly to hold of the donor by the performance of military duties, as the essential condition of their enjoyment, and on failure of the performance of which they became subject to resumption by the grantor.

As the whole emanated, originally, from the sovereign or chief, he stood in the position of lord paramount, or supreme head, and as such retained the ultimate property in every portion of the soil; the grantees of the sovereign or chief, as between themselves and their subordinate grantees, were termed *mesne* or intermediate lords.

In the earlier period of the system, feuds appeared to have been granted at the will of the lord only, afterwards for life, and eventually they became hereditary; and it seemed to have been an established rule, that unless express mention was made of the heirs or heirs of the body of the grantee the interest under the grant terminated with the life of the grantee.

One of the consequences of the Norman

conquest was the confiscation by the conqueror of the greater portion of the lands of this kingdom.

These were granted out by him to his followers, and by them to their inferiors, in accordance with the principles of the feudal system: and subject, therefore, to the performance of certain military services, and to an obligation on the part of the grantee to take, whenever required so to do, an oath to be faithful to his lord, or, in the language of the time, to do fealty to him.

But although it was the habit of the chief who received a grant of land immediately from his sovereign to appropriate the larger portion of it to his military followers or retainers to be held by the tenure which at that period, appeared alone to have been regarded as a tenure of honour, that was to say, by military service, yet other portions of the feud or fief were commonly allotted to a subordinate and non-military class, to be held by what was termed 'socage tenure.' The etymology as well as the precise meaning of this term 'socage,' was matter of controversy; perhaps the majority of writers interpreted the expression 'tenure by socage' as meaning 'plough-service.'

Whatever might have been its precise signification, the tenure by socage, though less honourable than that of military service, was not a tenure of degradation.

It was to that tenure that, by virtue of certain Acts passed in the reign of Charles the 2nd, all the lands in this kingdom in the hands of private persons (except lands of customary or copyhold tenure) were reduced.

The residue of the land received by the chief from the bounty of his sovereign was retained as his own, in the language of the day, as his 'demesne,' and was cultivated by his serfs or villeins; from this class had sprung the copyholders of this day; whilst freeholders had their origin in the two first-mentioned classes.

It was under this system that manors or seignories derived their origin.

Until the reign of Edward the 1st, the owner or grantee of the feud or fief was competent to transfer the land to a stranger in fee simple, to hold of the party so making the grant in the same manner as he himself held of his immediate superior, and by similar services, so that a party then seized of lands might transfer to another his entire interest in such lands, and yet retain the feudal seignory, which, amongst other advantages, carried with it the right of escheat, that was to say, the right to resume possession of the lands on failure of the heirs of the grantee or tenant.

It was the combination of this seignory with lands, parcel of the original subject of the grant, which in law constituted a manor. A manor consisted of *demesnes* and *services*, the former comprehending that portion of the land the absolute interest in which was never parted with by the lord, and including the *wastes* and (if there were any) the copyholds within the manor; the latter, that was to say the services,

consisting of the rents payable and the duties performable by the parties to whom, as freeholders, lands were conveyed in fee simple to hold of the lord making the grant, and including the right of escheat on failure of heirs of the tenant or grantee.

At the period, therefore of which they were speaking, every tenant in fee of lands, whether deriving his title immediately or mediately from the Crown, was competent to create a manor or seignory, to constitute himself by his own act a mesne or intermediate lord, to hold his courts accordingly, and to secure to himself the right of escheat and the various other valuable fruits of tenure.

To prevent alienations of this description, technically termed 'sub-infeudations,' and the mischiefs and inconveniences to which they gave rise, a Statute was passed in the 18th year of the reign of King Edward the 1st (from the words with which it commences commonly called 'The Statute of quia Emptores') which, after authorising every freeman to sell all or any of his lands at his own pleasure, enacted, that the alienee should hold the lands so sold of the same chief lord of the fee, and by the same, or a proportion of the same, services as his feoffor before held the same.

The effect of this Statute was therefore, virtually, to prohibit, thenceforth, the creation of manors or seignories: inasmuch as a party conveying to another in fee simple was rendered incapable of sub-infeudating or re-serving a tenure to himself. It was this Statute which gave rise to the introduction of what was technically called 'the tenendum' in conveyances of lands in fee simple, that was to say, to the words 'To be holden of the chief lord or lords of the fee thereof by the rents and services therefore due and of right accustomed.'

That clause, however, was never an essential part of the deed, inasmuch as it merely expressed, by way of echo, that which had been enacted by the Statute as a positive rule of law; and in modern times, therefore, it had fallen altogether into disuse.

From what had been stated, it necessarily followed that every legal manor existing in this country must have been created prior to the passing of the Statute adverted to.

It would also be inferred that it was at this day a fundamental principle of real property law in this country, that all land was, by indentment, holden either immediately, or mediately, of the Crown.

It was to be borne in mind, that the system of feuds originated altogether in the military policy of the times, and that at the period, at least, of its establishment, the essential condition of the enjoyment of the fief by the tenant or grantee was the performance (and originally personal performance) of military duties or service.

From that there resulted certain rules and principles, flowing necessarily out of the system, at which it was necessary to glance before quitting the subject; as they still materially influenced the Law of Real Property in this country.

Those were,—firstly, the rule which required a public and formal delivery of the possession of the land on the transfer of the immediate freehold by the tenant to a stranger.

And secondly, that which prohibited the abeyance or suspension of the immediate freehold, or which, in other words, required the fief to be continuously represented and filled by a tenant or owner. That latter rule interdicted all such dispositions as involved vacancy of the possession or seisin.

The publicity or notoriety in the transfer of the feud or freehold which was required by the first of those rules was secured by the mode of conveyance termed a feoffment, the essence of which consisted in the open and formal delivery of the land by the alienor to the alienee in the presence of the other tenants of the manor. This delivery was usually symbolical, that is to say, by the delivery of a turf cut from the soil into the hands of the feoffee, in the presence of witnesses; the ceremony was denominated "livery of seisin." No written instrument was necessary to its efficiency, though, in course of time, it became usual to accompany the transfer by a written document, with a view to its more complete evidence.

The necessity for a writing, as an essential portion of the assurance, did not arise till the passing of the Statute of Frauds and Perjuries, in the 29th year of the reign of King Charles the 2nd.

With the exception of an exchange and certain instruments or proceedings of record in the King's Court, denominated fines and common recoveries, the feoffment appears to have been the universal assurance of the realm for transferring *inter vivos* the immediate estate of freehold in corporeal hereditaments as between private parties.

Upon an exchange, the element of publicity was secured by that rule of law which required that, to perfect an exchange, it should be accompanied or followed by the mutual entry of each party to the transaction upon the lands exchanged; and, as to fines and recoveries, those being transactions in solemn form in the courts of the sovereign or the lord, were deemed to carry in themselves sufficient evidence of notoriety. This requisite of notoriety in the title and ownership of the feud, and publicity in its transfer or alienation, rendered invalid all attempts at limitations or substitutions which should seek to shift the freehold ownership from the feoffee or tenant to a stranger otherwise than by a new feoffment with livery, or which should seek to determine in favour of a stranger the ownership of the feoffee or tenant before it had completed its original measure or compass of duration.

Hence, at the Common Law, there was an entire absence of powers of appointment over the freehold, and all analogous acts of dominion and limitations having for their object the interrupting, divesting, or displacing the ownership in favour of a stranger before it naturally terminated or expired, were also unknown.

As regarded the *second* of the two rules adverted to, viz., that which prohibited the suspension or abeyance of the immediate estate of freehold, it was obviously a consequence of that rule that no feoffment or transfer of the freehold could be valid, unless it took immediate effect.

Hence, therefore, a feoffment of land by A. to B., to hold or be enjoyed from Christmas next, was simply void.

Such a contract could not be attempted without livery of seisin, in other words, without actual delivery of the possession of the land, and such actual and immediate delivery, the effect of which was to divest the feoffor, at once, of his interest in the land, implied the existence of a present and immediate recipient, and was therefore considered as wholly inconsistent with a postponed or deferred enjoyment by the feoffee. The common law, therefore, cut the knot of difficulty by holding the transfer to be simply nugatory, and thence the maxim that feoffments to commence or take effect in future were void.

It was upon the same principle, that of non-abeyance of the freehold, that validity was denied to all substitutions of the freehold of land which, as to the possession, were intended to be future or postponed, unless they were engrafted one upon another in one consecutive and unbroken series, each awaiting the natural and regular expiration of the one prior in order, and without a moment's interval to separate or disjoin the one from the other.

In that rule was traced the origin of what were technically denominated 'Remainders.'

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

REGULATIONS.

ANY solicitor desiring to be appointed a London Commissioner to administer Oaths in Chancery, is required to lodge with the Lord Chancellor's Secretary, a petition fairly written on foolscap paper, praying to be so appointed.

Every such petition must state the following particulars, *i. e.*—

1. That the applicant has practised as a solicitor for 10 years, and that his place of business is within 10 miles of Lincoln's Inn Hall.
2. The parish and (where practicable) the street and number of the house in which he has carried on his business for the last three years.
3. The names of his partners (if any), or (if such be the case), that he has no partner.

Every such petition must be accompanied by a certificate, signed by two solicitors (whose names, additions, and addresses must be given), who shall state that they are themselves soli-

citors of 10 years' practice, and that the applicant is known to them, and is a solicitor of respectability.

The accustomed certificate signed by two barristers will, in addition, be required.

Twenty-one days' notice of every such application shall be given to the Registrar of Solicitors to be submitted to the Council of the Incorporated Law Society of the United Kingdom.

November, 1853.

COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

REGULATIONS.

THE appointment of Country Commissioners to administer oaths under the Act 16 & 17 Vict. c. 78, will be in accordance with the regulations that have hitherto been required, viz. :—
The applicant must leave with the usual certificate signed by two barristers, a memorial signed by some of the public functionaries in the town where he resides that he is a fit and proper person for the office of "Commissioner, &c.," and that an additional Commissioner is required to administer oaths in the particular town or district.

QUESTIONS AT THE EXAMINATION.

Michaelmas Term, 1853.

I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. Was it ever necessary, and is it now necessary, in a writ of summons to mention the particular cause of action in respect of which the suit is brought?
6. On what day must a writ of summons be dated? And in whose name must it be tested?
7. Within what period must a writ of summons (without renewal), be served?
8. In case of a writ of summons issued against a corporation aggregate, how is the service to be effected?
9. In the event of its being necessary to issue a concurrent writ of summons, can a writ for service in England be issued and marked as a concurrent writ with one for service in France?
10. Where the parties are not under terms, how many days' notice of trial must be given, and is there any, and what, difference in the

number of days' notice to be given in a town and in a country cause?

11. A plaintiff or defendant having obtained a verdict upon the trial of a cause; how soon afterwards is such plaintiff or defendant entitled to issue execution? And are there any, and what, means by which a party may be restrained from issuing execution until a later day?

12. Where it is desired to charge in execution a person already in the Queen's Prison, what is now the proper course to be pursued so to charge a person in execution?

13. At the time of *A.*'s death *B.* owed him 100*l.* upon a bill of exchange, and *A.* also at the same time had a right of action against *B.* for a libel. Can the executors of *A.* maintain an action against *B.* in respect of both, or either, and which of the above causes of action?

14. *A.* dies, and by his will appoints *B.* and *C.* to be his executors,—they prove his will; *B.* afterwards dies, leaving *C.* him surviving,—*C.*, the surviving executor, then dies *intestate*, and *D.* becomes administrator of his effects. Debts due to *A.* remain outstanding, and for recovery of them actions become necessary, can such actions be maintained by *D.*, or who is the proper party to bring them?

15. When are simple contract debts barred by the Statute of Limitations?

16. Does it ever, and after what length of time, become unnecessary to call the attesting witness to prove the execution of a deed?

17. When the attesting witness to the execution of a deed is dead, and it becomes necessary to prove the execution of it, what is the proper mode of proof?

18. A banker, on taking a clerk into his employment requires him to find security by bond for his faithful conduct. *A.* enters into a bond in the penalty of 500*l.* conditional for the faithful conduct of the clerk in the banker's service; the clerk misapplies moneys and the banker sues *A.* upon the bond; *A.* lets judgment go by default, can the plaintiff under such judgment at once issue execution, or must he take any, and what, previous steps?

19. A father and his child under 10 years of age receive injuries by a collision on a railway; in seeking compensation at law for such injuries, must there be more actions than one, and in whose name or names, is, or are, such action or actions to be brought?

III. CONVEYANCING.

20. What is the meaning of the term "chase in action," and to what description of property is it applied?

21. Can a chase in action be legally assigned, or by what mode is the transfer of such property effected?

22. How does a judgment at Law affect the lands of the debtor, and what are the remedies by which the creditor can recover his debt out of such lands? Is there any distinction in this respect between freehold and leasehold lands?

23. The debtor assumed in the preceding question sells the land before the debt has been paid. Can the creditor in all cases recover the debt out of the land after it has been conveyed to the purchaser, or upon what does his right to recover it depend?

24. When did the Wills' Act, 1 Vict. c. 26, come into operation, and does it apply to the wills of all testators dying after that period?

25. What are the proper solemnities to be observed on the execution of a will by a testator who is blind?

26. You are required to prepare the will of a client; his property consists of 5,000*l.* in the funds and a freehold estate of 5,000*l.* a year. He wishes to leave a life interest in the whole to his wife, to secure 20,000*l.* to his younger children, and to make a strict settlement of the freehold estate upon his eldest son and his issue, what would be the best mode of carrying the testator's intentions into effect by a will?

27. State the principal covenants on the part of the lessee which should be contained in a building lease of land in a town to be granted by a freeholder.

28. State the searches which, on the part of a purchaser or mortgagee, ought to be made, in ordinary cases, before the completion of the purchase or mortgage of freehold and leasehold lands respectively.

29. Your client has purchased a freehold estate with the timber upon it, and the furniture, and fixtures of the mansion; and on the completion of the purchase, interest on the purchase-money is payable by him. Does the *ad valorem* duty on conveyances attach to the whole of the purchase-money and interest, or to what part of it?

30. You are instructed to prepare the settlement on the marriage of a client, and the property to be settled consists of money in the funds belonging to the wife. State the general provisions which would be made by the settlement in such case.

31. Upon an intended marriage, it is proposed that the income of the personal property of the wife shall be settled upon the husband for his life, if it can be secured against being affected by any assignment or charge which he may make, and against his creditors. Can this risk be effectually guarded against, and how?

32. If the personal property to be settled belong to the husband, and the first life interest be reserved to him, can that be secured against the assignment, charge, or incumbrance referred to in the preceding question?

33. By a marriage settlement of personal estate, the fund was settled upon the wife for life, without power of anticipation; remainder to the husband for life; and after the death of the survivor, it was to be divided amongst the children in equal shares, sons taking vested interests at 21, and daughters at that age or day of marriage. The husband is dead, and all the children have attained 21. The widow and the children are desirous to have the fund transferred to them by the trustees; can this be done with safety to the trustees during the life

of the widow? State the reason for your answer.

34. Lands are charged by way of mortgage in fee to *A.* and *B.*, their heirs and assigns. *A.* dies, leaving *B.* surviving, and afterwards the mortgage debt is proposed to be paid off. As a general rule, is the concurrence of the heir, or personal representative of *A.*, or which of them, required in the re-conveyance or not? or upon what circumstances does the necessity for such concurrence depend.

IV. EQUITY AND PRACTICE OF THE COURTS.

35. What are the principal matters over which the Court of Chancery exercises Jurisdiction?

36. What are the modes of proceeding to commence a suit in the Court of Chancery, and of giving notice of the suit to the defendant?

37. In what cases, and upon what terms, may a written copy of a bill in Chancery be filed instead of a printed copy?

38. What preliminary step is necessary where an infant, or a married woman, or other party under disability, is plaintiff in a suit?

39. If an answer be required from a defendant, by what proceedings, to be taken within what period, is such answer to be obtained?

40. Within what period must a defendant required to answer, put in his plea, answer, or demurrer?

41. Is it competent for a defendant not required to answer a bill, to put in a plea, answer, or demurrer thereto; and if so, within what period must this step be taken by him?

42. What are the modes of taking evidence in the Court of Chancery?

43. By what summary process can a creditor, legatee, or next of kin of a deceased person, procure the administration of his real or personal estate?

44. Is it competent for the Court in a foreclosure suit to direct a sale of the mortgaged estate, instead of a foreclosure?

45. By what summary process, and how obtained, can a person interested in a sum of stock, standing in the name of another person in the books of the Bank of England, restrain the transfer of such stock, or the payment of the dividends thereon?

46. By what means can the party in whose name the stock is standing proceed to remove the restraint?

47. In the administration of the estate of a deceased person, what is the order of payment of the different species of debts?

48. What course of proceeding is open to a trustee who is desirous of being relieved from the performance of his trust?

49. What is necessary in order to make an infant a ward of Court?

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. What proceedings are requisite to obtain an adjudication in bankruptcy?

51. May a trader make himself bankrupt, and how?

52. How can a joint-stock company be made bankrupt?

53. When, and in what manner, may a trader dispute the adjudication against him?

54. How can creditors prove their debts, and when, for the purpose of receiving a dividend?

55. What course can a creditor adopt who has a contingent debt or claim?

56. State the practice with regard to the proof of bills of exchange or promissory notes not due at the time of the bankruptcy.

57. How does the property of the bankrupt become transferred or vested in the assignees?

58. Is there any, and what, property in the possession or control of the bankrupt which does not pass to the assignees?

59. Can the assignees in any, and what circumstances decline to take the bankrupt's leasehold property?

60. In what circumstances will the delivery of goods by a trader to one of his creditors in satisfaction of a debt, be deemed a fraudulent preference?

61. When one of several partners becomes bankrupt, what is the effect on the partnership?

62. What is the rule as to the distribution of the joint, and of the separate effects of the partners when all are bankrupt?

63. By whom is the bankrupt's certificate granted?

64. Is there any mode by which the creditors of a trader can be compelled to accept a composition for their debts, or to submit to an arrangement with such trader, otherwise than by a bankruptcy? and if so, state its nature.

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

65. What is the preliminary course and form of proceedings in a criminal case, as contradistinguished from civil process?

66. Which is the Supreme Court of Criminal Jurisdiction in England?

67. Have all the Superior Courts at Westminster concurrent and equal jurisdiction in criminal matters, or has any one, or more, and which of them, peculiar jurisdiction in such matters?

68. In what manner is a person appointed a justice of the peace for the county, and is any, and what, qualification necessary to render him eligible?

69. What constitutes a Court of Petty Sessions?

70. In what cases are magistrates responsible for acts done in their magisterial capacity?

71. In case of an action against a magistrate for malfeasance in execution of his office towards a party brought before him, to what notice is he entitled of the intended proceedings?

72. What is the proper course of removing an indictment from an inferior to a Superior Court, and are the prosecutor and defendant equally entitled to apply for the removal?

73. Are any, and what, persons held in law to be excused in respect of the commission of crime?

74. What is the distinction between murder and manslaughter?

75. Define the offence of forgery as settled by Statute.

76. Describe the crime of embezzlement.

77. State what constitutes the crime of arson.

78. Describe concisely the crime of perjury, and state the evidence necessary to sustain an indictment, and obtain conviction for its commission.

79. Is the truth of a libel a sufficient defence to a criminal prosecution for it? and if so, how is the defence to be made?

PROFESSIONAL LISTS.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From October 25th to 18th Nov. 1853, both inclusive, with dates when gazetted.

Bunny, Jeré, and Henry Bunny, Newbury, Attorneys and Solicitors. Nov. 11.

Davenport, Thomas, and Thomas Bagnall Collier, Liverpool, Attorneys and Solicitors, Nov. 8.

Dimsdale, Frederick, and Oliver Wimburn Lloyd, 20, King's Arms Yard, City, Attorneys and Solicitors. Nov. 1.

Mitchell, William, and Richard George Pern Minty, Petersfield, Attorneys and Solicitors. Nov. 18.

Talbot, William, and Frederic Talbot, Kidderminster, Attorneys and Solicitors. Nov. 1.

Tucker, William Owen, William Owen John Tucker, and John Tucker, Sun Chambers,

Threadneedle Street, City, Attorneys and Solicitors (so far as relates to the said William Owen Tucker). Nov. 8.

Walker, Lawrence, Arthur Walker, Frank Atkinson Argles, and Frederick Allan Grant, 13, King's Road, Gray's Inn, Attorneys and Solicitors (so far as regards the said Frank Atkinson Argles). Oct. 28.

Williams, George Edmunds, Frederick Thomas Griffiths, and Edward Lloyd Griffiths, Cheltenham, Attorneys and Solicitors. Nov. 1.

Wilton, Joseph Robert, William Blackman, and Augustus George Guy, 1, Raymond Buildings, Gray's Inn, Attorneys and Solicitors (so far as regards the said Joseph Robert Wilton). Nov. 4.

PERPETUAL COMMISSIONERS.

Appointed under the Fines and Recoveries' Act.

Hostage, John, Chester, in and for the City of Chester, also in and for the County of Chester. Nov. 18.

Langham, Thomas Parker, Hastings, in and for the County of Sussex. Nov. 15.

NOTES OF THE WEEK.

SCOTCH LAW APPOINTMENT.

THE Queen has been pleased to grant the place of one of the Lords of Session in Scotland to *Robert Handyside, Esq.*, her Majesty's Solicitor-General for Scotland, in the room of *Adam Anderson Esq.*, deceased.—From the *London Gazette* of 18th Nov.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

In re Pugh. Nov. 10, 1853.

LUNATIC.—CHARGE ON REVERSIONARY ESTATE FOR MAINTENANCE.—COMMITTEE.—PETITION REFUSED.

A petition was refused for a lunatic's reversionary estate in property to be charged with payment, under the 16 & 17 Vict. c. 70, s. 116, of 250l. for his maintenance, on the petition of his father and committee, with whom he lived, and who was tenant for life—where the father's income was 4,000l. per annum—but with leave to apply again if a case could be made out, on the ground of the number of younger children or other circumstances of pressure.

THIS was a petition for the confirmation of the Master's report approving of the application of a sum of 250l. a year for the maintenance of this lunatic, and seeking to charge that amount on the lunatic's reversionary interest in an estate producing 4,000l. per annum, of which his father and committee of the person was tenant for life, and with whom he resided.

By the 16 & 17 Vict. c. 70, s. 116, it is enacted, that "where it appears to the Lord

Chancellor intrusted as aforesaid to be just and reasonable, or for the lunatic's benefit, he may order that any estate or interest of the lunatic in land or stock, either in possession, reversion, remainder, contingency, or expectancy, be sold, or charged by way of mortgage, or otherwise disposed of, as may to him seem most expedient, for the purpose of raising money to be applied, and may accordingly order that the money when raised be applied, for or towards" the lunatic's maintenance; and by sect. 117, that "in case of a charge or mortgage being made under this Act upon an interest," "in reversion, remainder, or expectancy, for the expenses of future maintenance, the Lord Chancellor intrusted as aforesaid may direct the same to be payable and paid," "upon the happening of the event, if the interest be dependent on an event which must happen, and either in a gross sum or in annual or other periodical sums, and at such times, in such manner, and either with or without interest, as he shall deem expedient."

J. V. Prior in support.

The Lord Chancellor said, that as the petitioner did not set forth the whole amount of his income and number of the family, no order could be made to provide for the maintenance out of

the reversionary estate, but with leave to renew the application if the petitioner could make out a proper case, on the ground of the number of younger children or other circumstances of pressure.

Cookson v. Bingham. Nov. 16, 1853.

WILL.—CONSTRUCTION.—JOINT DEVISE.—
POWER TO SURVIVOR TO DISPOSE BY WILL.—
—COSTS.

A testator devised his estates to his daughters, J., M., and S., to be jointly and equally enjoyed, or divided in case of the marriage of any of them, and they, or the survivor in case of death, were authorised to dispose of the same by will or assignment, as they should think proper: Held, dismissing an appeal from the Master of the Rolls, that the survivor of them alone was empowered, as the other two had died unmarried, to dispose of the property by will. The costs were directed to be met by the sale of a leasehold house which was the only personal estate, and if there were any deficiency, it was to be borne by the plaintiffs, who claimed by devise in M.'s will, to the defendants the devisees under the will of J., who was the survivor.

THE testator, William Bownas, by his will, dated in August, 1821, gave and devised all his landed estates in the county of Westmoreland, of whatever description, with their appurtenances, to his daughters, Jane, Mary Anne, and Sarah, to be jointly and equally enjoyed or divided in the case of the marriage of any of them, and they, or the survivor in case of death, were thereby fully authorised to dispose of the same by will or assignment, as they should think proper, giving preference to those of his name and relations, according to behaviour; and he also gave to his said three daughters a leasehold house. On his death, the daughters took possession and enjoyed jointly the real and personal estate. Sarah died in 1828, unmarried, and gave by will all her real and personal estate to her two sisters; and in 1851 Mary Anne died unmarried, and devised all her real estates to the defendants, in trust for her sister for life, and on her death for the persons entitled under that her will to her residuary personal estate, and she gave the residue of her personal estate to be divided among the plaintiffs, or the survivors or survivor of them living at her sister's death, in equal shares. In 1852, Jane died, having devised all her real estate to the defendants, in trust for the persons entitled under that her will to her residuary personal estate, and she gave such residue to the defendant, Peregrine Bingham. The plaintiffs, who were the devisees under the will of Mary Anne, claimed a moiety of the estates comprised in the testator's will, but their bill was dismissed by the Master of the Rolls, on the ground the estates were devised jointly to the three in fee, whereupon this appeal was presented.

R. Palmer, Rudall, and Hetherington in

support, citing *Eltricke v. Eltricke*, Ambl. 656; *Perkins v. Baynton*, 1 Bro. Ch. Ca. 118; *Haws v. Haws*, 3 Atk. 524; *Warner v. Hone*, 1 Eq. Abr. 392.

Solicitor-General, Roupell, and Grove, contra. The Lord Chancellor said, the will amounted to a devise of the real estate in fee to the three daughters, with a power to the survivor of them alone to dispose of the same by will, as the testator's intention was that the property should form a common fund for their maintenance during life. It was unnecessary to speculate on the effect on the property of the marriage of either of the daughters, as that event had not happened, and the appeal would be dismissed,—the costs to be met by the sale of the leasehold house, which was the only personal property, and if there were any deficiency, it was to be paid by the plaintiffs to the defendants.

Lords Justices.

In re Biddle. Nov. 19, 1853.

TRUSTEE ACT, 1850.—LUNATIC MORTGAGEE.—PAYMENT OF FUND INTO COURT.—
—VESTING ORDER.—COSTS.

Order made on petition, under the 13 & 14 Vict. c. 60, on behalf of the receiver of a lunatic mortgagee's estate (not so found by inquisition), and of the mortgagor's representatives, for liberty to the latter to pay the mortgage debt into Court, and the interest to the receiver, with a vesting order in them freed therefrom; and the costs of the petition and of the next of kin and heir-at-law were directed to be paid out of the fund.

THIS was a petition under the 13 & 14 Vict. c. 60, on behalf of the receiver of the estate of a lunatic mortgagee, not so found by inquisition, and of the mortgagor's representatives, for the latter to pay the amount of the mortgage debt into Court, and the interest to the receiver, and for a vesting order in them freed therefrom.

Springall Thompson in support, asked for payment of costs of the petition, with the exception of the stamp on the vesting order, out of the fund, citing *ex parte Richards*, 1 J. & W. 264; *In re Wheeler*, 1 De G. M'N. & G. 435.

Sparling for the lunatic's heir-at-law and next of kin, also applied for costs.

The Lords Justices in making the order as prayed said, that the order as to the payment of costs out of the fund was not to be drawn into a precedent.

In re Dimsdale, ex parte Dimsdale. Nov. 19, 1853.

BANKRUPT.—ISSUE OF SUMMONS ON THIRD PARTY, TO APPEAR AND BE EXAMINED TOUCHING ESTATE.—ASSIGNEE'S CONSENT.—COSTS.

Quære, whether a bankrupt is entitled under the 12 & 13 Vict. c. 106, s. 120, to apply

for the issue of a warrant on a party to appear and be examined touching the estate, without the concurrence of the assignees?

But where the official assignee had investigated the matter, and was of opinion no benefit would arise therefrom, an appeal was dismissed from Mr. Commissioner West, refusing the application—the costs of the summoned party who had been served with the petition of appeal instead of the assignee, to be paid by the bankrupt.

THIS was an appeal from the decision of Mr. Commissioner West, refusing the bankrupt's application for the issue of a warrant, under the 12 & 13 Vict. c. 106, s. 120, on a Mr. Hutton, the trustee, for sale and distribution among the creditors, of an estate belonging to the bankrupt, which had been conveyed in 1813, to appear and be examined touching the bankrupt's estate, for the purpose of enabling the official assignee to recover sufficient property to meet the debts, and to leave a balance for the bankrupt's benefit. It appeared the official assignee had declined to join in the application, on the ground he had investigated the circumstances, and no benefit would result therefrom, and the Court of Bankruptcy had confirmed this view. No creditors' assignees had been appointed.

Sturgeon in support.

The *Lords Justices* (without calling on J. Hyde Palmer for Mr. Hutton, who had been alone served with the appeal petition) said, that even assuming the summons could be applied for by the bankrupt without the concurrence of the assignees, no case had been made out for its issue, and the appeal must be dismissed with costs, to be paid by the petitioner as the assignee, and not Mr. Hutton, ought to have been served.

Master of the Rolls.

Bentley v. Craven. Nov. 15, 16, 1853.

PARTNERSHIP. — DISSOLUTION. — TAKING ACCOUNTS. — PROFITS ON TRANSACTION WITHOUT KNOWLEDGE OF OTHER PARTNER.

On taking the accounts upon the dissolution of a partnership, held that the defendant was to account for the profits made on a transaction which he had effected without the knowledge of the other partner.

In this case it appeared that a dissolution of partnership between the plaintiff and defendant, as sugar refiners, had been agreed upon, and a reference directed to take accounts, and that the defendant had previously to the dissolution purchased and sold on his own account, at a profit, a quantity of sugar, without paying such profit over to the partnership account.

R. Palmer, Roupell, and Lewis for the several parties.

The Master of the Rolls said, that one partner had no right to make profits as against the other partner, and that the defendant must carry to the partnership account the profit

made on the sugar purchased without the plaintiff's knowledge.

In re Andrews. Nov. 17, 1853.

SOLICITOR. — TAXATION OF BILL OF COSTS FOR ATTENDING TO WATCH REGISTRATION OF VOTERS. — JURISDICTION.

Held, that the bill of costs of a solicitor for attending to watch the registration of voters for the purpose of serving the interest of a candidate, is taxable on petition by the Lord Chancellor or in this Court.

THIS was a motion to discharge an order of course which had been obtained on petition for the taxation of the bill of costs of Mr. Andrews, for attending to watch the registration of voters for Lincolnshire, on behalf of the liberal interest.

Lloyd and Hallett in support, on the ground of want of jurisdiction, as the bill was for business in a Court of Law, and taxation should have been there obtained under the 6 & 7 Vict. c. 73, s. 41.

R. Palmer and Shapter, contra.

The Master of the Rolls said, that the Court of the revising barrister was a Court of inquiry to ascertain and determine who ought to be on the lists of voters, with an appeal to the Court of Common Pleas, but it was not a Court in which a suit could originate or any motion be made with respect to a suit at law, and the costs were therefore taxable by the Lord Chancellor or here, on petition. The motion would accordingly be refused with costs, but with leave to Mr. Andrews to make out a strict bill of costs for taxation under the order.

Vice-Chancellor Kindersley.

Hill v. Great Northern Railway Company.
Nov. 14, 1853.

RAILWAY COMPANY. — PURCHASE OF PROPERTY WITH INCUMBRANCES. — SPECIFIC PERFORMANCE.

A railway company on requiring certain property for their station, had given notice thereof to the owners, and to two annuitants thereon, the first of whom had powers of sale, and the second of entry and distress. They afterwards purchased under the first annuitant's power of sale: Held, that the second annuitant was entitled to be paid the value of his incumbrance, and a reference was accordingly directed to ascertain its value.

Quere, whether the second annuitant could maintain a bill for specific performance?

It appeared that the defendants, upon requiring certain houses in Union Place, Maiden Lane, Battle Bridge, for their station at King's Cross, had given notice to the owners of the same, and to Mr. Gadd, an annuitant thereon with a power of sale, and also to the plaintiff, who held a subsequent annuity of 7l. secured on the same, with powers of entry and distress. The defendants afterwards purchased of Mr.

Gadd under his power of sale, and this bill was therefore filed to recover the value of the annuity with arrears.

Elmsley and Younge for the plaintiff; *Goren* for the company, contra, citing the 8 & 9 Vict. c. 18, ss. 18, 115.

The *Vice-Chancellor* said, that, without deciding whether the plaintiff could maintain a bill for specific performance, he was entitled to have the value at the time the notice was given of his interest in the property, and a reference was therefore directed to ascertain its value.

Esparle Earl of Shrewsbury. Nov. 18, 1853.

RAILWAY COMPANY.—PURCHASE OF LAND BELONGING TO INFANT.—ACCUMULATION OF DIVIDENDS.—VESTING ORDER UNDER TRUSTEE ACT, 1850.

Lands belonging to an infant were taken for the purposes of a railway, and the purchase-money was paid into Court. An order was made for its investment and for the dividends to accumulate, but it was held unnecessary to obtain a vesting order in the company, under the 13 & 14 Vict. c. 60, as the guardian had authority to convey under the Statute.

Fleming appeared in support of this petition, for the investment of the purchase-moneys of land belonging to an infant, which were taken for the purposes of a railway, and for the dividends thereon to be accumulated. An order was also sought under the Trustee Act (13 & 14 Vict. c. 60), vesting the estate in the railway company.

Prior for the company.

The *Vice-Chancellor* said, the dividends would be ordered to accumulate, but that there was no necessity for a vesting order, as the guardian had full authority under the Statute to execute the deed of conveyance,

Vice-Chancellor Stuart.

Esparle Greenwood, in re Sea Fire and Life Assurance Association. Nov. 10, 1853.

WINDING UP.—CALL FOR COSTS.—MOTION TO DISCHARGE BY SHAREHOLDER.

A call of 1l. per share had been made by the Master for the costs of winding up. A holder of 25 shares moved to discharge, on the ground the deed of settlement provided that the shareholders should not be liable beyond the amount paid on their shares. The motion was refused.

THIS was a motion to discharge an order of the Master charged with the winding up of the above company, making a call for the costs incurred of 1l. per share on the appellant, who held 25 shares therein. It appeared that the company's deed of settlement provided that the shareholders should not be liable beyond the amount paid on the shares, and a prospectus forwarded to the appellant also contained a similar proviso.

G. Lake Russell in support, on the ground that, although he might be liable in the event

of the parties primarily so being unable to pay the debt, he was not liable until such parties had been applied to; *Daniel* and *Rozburgh* for the official manager, contra.

The *Vice-Chancellor* said, that the appellant came to complain of being compelled to contribute to the costs of proceedings with which he contended under the deed of settlement he had nothing to do, as his objection went to show he should not have been made a contributory, and the motion would therefore be refused.

Vaudrey v. Howard. Nov. 12, 1853.

WILL AND CODICIL.—CONSTRUCTION.—REVOCATION.—LAPSE.

A fund was directed by the testator to be divided equally among his five sons and his grandson, with a proviso that the bequest was revoked as to two of the sons, to whom moneys had been advanced, unless the mill, of which they had the exclusive advantage, sold for a certain sum. The mill was sold for a less sum: a declaration was made that the other four were to take such shares.

IT appeared that the testator, John Howard, by his will, directed a fund to be divided equally among his five sons and his grandson, and then provided that he revoked the gift as to two of his sons, to whom large advances had been made, unless the mill, of which they had the exclusive advantage, sold for a sum exceeding 6,000l., in order to secure as far as possible an equal participation in his property. The mill sold for a sum less than 6,000l. In this administration suit of his estate the question arose, whether the other parties were entitled to the revoked shares.

Malins, Follett, Teed, Dickenson, Gordon, Druce, and Hallett for the several parties.

The *Vice-Chancellor* said, there would be an intestacy if the gift were simply revoked, but inasmuch as an intention appeared from the codicil that the other four should take the two shares, a declaration would be made to that effect.

Vice-Chancellor Wood.

Kavanagh v. Morland. Nov. 9, 1853.

WILL.—CONSTRUCTION.—ISSUE.—ESTATE TAIL.

A testator gave freehold estates to his wife and granddaughter for their respective lives, and directed that in case the wife should again marry, she should take a life interest, and he also declared that if the granddaughter died leaving issue, his estate should, after the death of his wife, be distributed among them, share and share alike as therein directed, with a gift over to trustees in the event of her dying without issue. The widow had again married: Held, that the granddaughter took an estate tail, and not merely an estate for life.

THIS was a special case for the opinion of

the Court. It appeared that the testator, James Maskell, gave certain freehold estates to his wife and granddaughter, Ann Maskell, for their respective lives, and directed that in case his wife should again marry, she should take a life estate in his mansion-house, with the lands and premises belonging to the same, and known as "Moat House." The testator also declared that if the granddaughter died leaving issue, all his freehold and copyhold lands should, after the death of his wife and sister, be distributed among them, share and share, as therein directed, with a gift over to trustees for sale in the event of his granddaughter dying leaving no issue, and after the death of his wife. The testator died in 1790, and the granddaughter married a Mr. Hay in 1797, and after the death in 1817 of the widow, who had married again, the granddaughter, having no issue at the time living, suffered with her husband a recovery to bar the remainders over, and to such uses as they should during their joint lives appoint, and they appointed part of the Moat House estate to the plaintiff, who had contracted to sell to the defendant. An objection having been taken to the title on the question, whether the granddaughter took an estate for life or in tail, this special case was presented.

W. M. James, J. V. Prior, and H. F. Bristowe appeared for the several parties.

The Vice-Chancellor held, that the granddaughter took an estate tail in the property.

Mandeno v. Mandeno. Nov. 15, 1853.

COSTS OF SUIT AS TO CONSTRUCTION OF WILL. — MORTGAGE OF REAL ESTATE, WHERE NO PERSONALTY.

In a suit as to the construction of a will which had been necessarily instituted, the costs were directed to be raised by mortgage in preference to a sale of the real estate, there being no personalty, the decree to be worked out at chambers.

In this suit, as to the construction of a will, it appeared there was no personal estate, and it was therefore proposed to sell or mortgage the devised estate to provide for the costs.

Roll, Bailly, Sheffield, Prior, Haddan, and J. W. De L. Gifford, for the several parties, citing *Adams v. Adams*, 1 Hare, 536.

The Vice-Chancellor directed that the costs which had been necessarily incurred, should be raised by mortgage in preference to a sale, so as to avoid having a surplus beyond the sum required—the decree to be worked out at chambers.

Court of Queen's Bench.

Golt v. Gaudy. Nov. 11, 1853.

LANDLORD AND TENANT FROM YEAR TO YEAR. — LIABILITY OF LANDLORD FOR INJURIES CAUSED BY FALL OF CHIMNEY.

The plaintiff was tenant from year to year of the defendant's house, and it appeared one of the chimneys fell down on the premises

and injured his goods: Held, that as the relation of the parties was entirely one of contract, and it did not appear the defendant was bound to repair on request, the plaintiff was not entitled to recover in an action for such damages, and a demurrer to the declaration was allowed.

THIS was a demurrer to the declaration in an action by the tenant from year to year of certain premises against his landlord, and which alleged that a chimney on the premises, without the negligence or default of the plaintiff, as such tenant to the defendant, was in danger of falling, yet that the defendant, not regarding his duty in the premises, did not nor would not do such substantial repairs to the chimney as were necessary and proper, or do or take any other means to prevent the same from falling, by means of which negligence the chimney, whilst the plaintiff was in occupation of the premises, fell and injured the plaintiff's goods.

Unthank in support of the demurrer; *J. A. Russell*, contra.

The Court said, that as it did not appear the defendant was bound to repair on request, and the relation of the parties was entirely one of contract, the defendant was entitled to judgment.

Kernot v. Catlin. Nov. 15, 1853.

INSOLVENT.—DIPLOMA OF SURGEON.—ASSIGNEES.

Held, that the diploma as surgeon of an insolvent does not pass to his assignees.

THIS was a demurrer to the declaration in this action by the plaintiff, who was a surgeon, and had become insolvent, to recover his diploma from the assignees.

Willes for the defendants in support; *Milward* for the plaintiff, contra.

The Court said, the diploma was necessary for the plaintiff to prove his personal identity and title to practise, and did not pass to the assignees, and he was therefore entitled to judgment.

Couch v. Steele. Nov. 15, 16, 1853.

SHIPOWNER.—LIABILITY TO SEAMAN FOR SHIP'S UNSEAWORTHINESS.

Held, that a seaman is not entitled to recover in an action against a shipowner for injury sustained through the vessel's unseaworthiness.

THE declaration in this action alleged that the plaintiff, who was an able-bodied seaman with a register ticket, had been engaged by the defendant, a shipowner at Plymouth, to proceed on a voyage on board a vessel lying there, and that the vessel at the time of the commencement of such voyage was unseaworthy and leaky, whereby the plaintiff was unable to sleep in his hammock, and was exposed to unreasonable labour. To this there was a demurrer, on the ground that there was no im-

plied warranty of the ship's seaworthiness, and also that the plaintiff's remedy was confined to the penalty of 20*l.*, imposed by the 7 & 8 Vict. c. 112, s. 18 (Merchant Seamen's Act).

Kingdon in support of the demurrer; *Milward*, contra.

Cur. ad. vult.

The Court said, there was no contract or duty disclosed in the declaration, which could be the foundation of the action. The defendant might have been himself ignorant of the defects in the ship, and it was open to the plaintiff to have examined its condition before engaging himself to serve in it. The case of *Gibson v. Small*, in the House of Lords, did not apply, as the dicta of the Judges had reference to warranty in the case of a policy of insurance; but on the contrary, if the principle of *Seymour v. Maddox*, 16 Q. B. 326, and *Priestley v. Fowler*, 3 M. & W. 1,¹ were applied, the action could not be obtained. The demurrer must therefore be allowed.

Gompertz v. Bartlett. Nov. 16, 1853.

SALE OF FOREIGN BILL OF EXCHANGE.—MISDESCRIPTION.—FAILURE OF CONSIDERATION.

The defendant sold to the plaintiff a bill of exchange purporting to be drawn at Sierra Leone, and unstamped. It appeared to have been drawn in this country: Held, that the plaintiff was entitled to recover its amount in an action for money had and received to his use, there being a failure of consideration.

THIS was a rule nisi to set aside the nonsuit and enter the verdict for the plaintiff in this action, which was brought for money had and received to the plaintiff's use. It appeared that the defendant had sold to the plaintiff a bill of exchange purporting to be drawn at Sierra Leone, and unstamped. It appeared, however, that it had been drawn in this country, and this action was brought as for a total failure of consideration.

Chambers and Pearson showed cause; *Petersdorff* in support.

The Court said, that the plaintiff was entitled to recover on the ground the bill sold was of an entirely different description from what it professed to be, and was of little or no value, having been drawn in England. The rule was therefore made absolute to enter the verdict for the plaintiff.

Foxhall v. Barnett. Nov. 17, 1853,

ACTION FOR FALSE IMPRISONMENT UNDER CORONER'S INQUISITION.—COSTS OF SETTING ASIDE INQUISITION.

The plaintiff was taken into custody and held

to bail, under an inquisition before a coroner, which afterwards appeared to have been taken without jurisdiction as in a wrong county: Held, that the plaintiff was entitled to recover as well the costs of setting aside the inquisition as the costs of procuring bail.

A RULE nisi had been obtained on Nov. 4 last, to reduce the damages in this action for false imprisonment brought against the coroner for Gloucestershire. On the trial before *Colebridge, J.*, at the last assizes for Gloucester, it appeared that, in consequence of an inquisition before the defendant, on the body of a man found dead, the plaintiff had been taken into custody, and had been put to the expense of 25*l.* odd for procuring bail, and that it was afterwards ascertained the inquest had been held at a public-house not in the county for which the defendant was coroner, and proceedings were thereupon taken to set aside the inquisition; and costs incurred to the amount of about 46*l.* The question in this action to recover such costs was, whether the proceedings to set aside the inquisition were necessary.

James and Holl showed cause; *Keating* in support.

The Court said, that as the plaintiff was not by his discharge on bail restored to the state in which he was before the charge in question was preferred, and could not be said to be restored until the inquisition was quashed, he was entitled to set aside the inquisition and to recover the costs thereby incurred. The rule would therefore be discharged.

Court of Common Pleas.

Leidmann, app.; Schultz, resp. Nov. 8, 1853.

CHARTERPARTY.—PLAINT IN COUNTY COURT FOR BREACH.—EVIDENCE AS TO CUSTOM OF PORT.

On the trial of a plaint in the County Court by the owner of a ship against the charterers, to recover damages for its detention in the river Tyne, contrary to the charterparty providing for its being loaded in regular turn of loading with coals and coke, the Judge rejected evidence of the custom of the port, as to the meaning of the words "in regular turn of loading"—a new trial was, on appeal, directed with costs.

By a charterparty, it was agreed the respondent's vessel should, with the first opportunity and all possible despatch after the signing thereof, proceed to the river Tyne, and on arrival there be ready forthwith, in regular turn of loading, to take on board a cargo of coals and coke, and being so loaded, should be ready for sea and proceed with the first opportunity and all possible despatch to Carthage, in Spain. The charterparty was signed on Jan. 11, 1853, and the vessel arrived at Newcastle on the 25th, and was loaded with the coals on Feb. 3, and on March 3 she commenced loading with coke, and was fully loaded on the 11th

¹ See also *Hutchinson v. York, Newcastle, and Berwick Railway Company*, 5 Exch. R. 343; *Wigmore v. Jay*, ib. 354.

The respondent claimed 50*l.* for this detention, and had brought an action in the Northumberland County Court, at Newcastle. On the trial, evidence was tendered as to the custom of the port in reference to the entry of vessels for their turn, but it was rejected; and the jury were directed that the cargo should be put on board within a reasonable time, and returned a verdict for the respondent, whereupon this appeal was presented.

Bovill in support, citing *Robertson v. Jackson*, 2 C. B. 412; *Syres v. Jonas*, 2 Exch. R. 111; and the 8 & 9 Vict. c. 73, s. 11.

Udall, contra.

The Court said, that the evidence as to the custom of the port had been improperly rejected as to the meaning of the words "in regular turn of loading," and there must be a new trial with costs.

Bryce v. Higgins. Nov. 14, 1853.

PUBLIC HEALTH ACT.—ACTION FOR PENALTY FOR MEMBER OF LOCAL BOARD IMPROPERLY VOTING.—PRACTICE.

In an action to recover a penalty under the 11 & 12 Vict. c. 63, s. 133, against a proprietor of the M. pier and a member of the Local Board of Health, for voting on a question before the board relating to the pier: Held, that as the plaintiff had not shown under s. 19 he was a party grieved, or had obtained the consent of the Attorney-General, the defendant was entitled to judgment.

THIS was an action against the defendant, who was a proprietor of the Margate Pier and a member of the Local Board of Health, to recover a penalty of 50*l.* under the 11 & 12 Vict. c. 63, s. 133, for voting on a question which came before the board relating to the pier. The facts were turned into a special case for the opinion of this Court.

By s. 19 of the 11 & 12 Vict. c. 63, it is provided, that "no person, being a proprietor, shareholder, or member of any company or concern established for the supply of water, or for the carrying on of any other works of a like public nature," "shall vote as members of the said local board upon any question in which such company or concern is interested."

Channell, S. L., for the plaintiff; *Phipson* for the defendant.

The Court said, that as the plaintiff had failed to show he was "the party grieved" or had obtained the Attorney-General's permission to sue for the penalty, the defendant was entitled to judgment.

Court of Exchequer.

Eastern Union Railway Company v. Cochrane.
Nov. 16, 1853.

ACTION ON BOND.—CLERK TO RAILWAY COMPANY.—AMALGAMATION OF COMPANIES.

On the amalgamation of two railway com-

panies, it was provided that all bonds given to either of them should enure to the benefit of the new company. A demurrer was overruled in an action by the new company on a bond given by the defendant for the fidelity and honesty of a clerk in the service of one of the old companies.

THIS was a demurrer to the declaration in an action on a bond given by the defendant for the fidelity and honesty of a clerk in the service of the plaintiffs before their amalgamation with the Ipswich and Bury St. Edmunds Railway Company under the 10 & 11 Vict. c. clxiv. By s. 10 of the Act it was enacted, that all "bonds, &c., of which the dissolved companies, or either of them, were possessed or entitled at Law or in Equity," "shall be vested in and belong to the new company for their absolute benefit," "and may be proceeded on and enforced in the same manner to all intents and purposes as if the last-mentioned company had been a party to and executed the same, or had been named or referred to therein."

O'Malley in support of the demurrer; *Bramwell* for the plaintiffs, contra.

The Court said, that the words in the Act were clear on the point, and that the plaintiffs were entitled to judgment.

Court of Exchequer Chamber.

Great Western Railway Company v. Reginam.
Nov. 10, 1853.

RAILWAY COMPANY.—MANDAMUS TO COMPLETE LINE.—COMPULSORY POWERS.—CONSTRUCTION OF STATUTE.

A railway Act enacted, that the company "shall and they are hereby required" to go to Parliament for an Act to make a branch line, and an Act was accordingly obtained, in which the words were "it shall and may be lawful" for the company to make the line in question: Held, affirming the decision of the Court of Queen's Bench, on a demurrer to the return to a mandamus on the company to complete the line, that as the later Act was incorporated with the former one, it did not repeal the compulsory powers of the former Act.

THIS was a writ of error from the judgment of the Court of Queen's Bench (reported 1 Ellis & B. 774), on a demurrer to the return to a mandamus on the above company to make and complete a line of railway from Bradford to Barhampton, under the 8 & 9 Vict. c. liii., which, after reciting that it was expedient an improved communication should be formed from the Wilts, Somerset, and Weymouth Railway, enacted by s. 62, that on the Act being obtained, the company "shall, and they are hereby required," to go to Parliament in the following Session for an Act to make such communication accordingly. An Act was afterwards obtained in 1846, to extend the time for making the railway and empowering

the company to borrow money, if required, and in that Act the words were, "and it shall and may be lawful for the company" to make the branch in question; and in 1851 the powers of the Wilts, Somerset, and Weymouth Railway Company were transferred to the appellants (14 & 15 Vict. c. xlviii.)

Butt and *Unthank* in support, contended the words of the first Act which were obligatory had been repealed by the amendment Act, which was permissive only.

The Court (without calling on *Crowder* and *Prideaux*, *contra*), said, that the Act of 1845 cast a clear and positive obligation on the company to make the new line of railway, and that the new enabling power of the subsequent Act had not the effect of repealing the compulsory one, as it was incorporated with the former Act, and the decision of the Court of Queen's Bench must be affirmed.

Taff Vale Railway Company v. Giles. Nov. 10, 1853.

RAILWAY COMPANY. — CARRIERS. — EVIDENCE OF CONVERSION. — AGENT.

The general superintendent of a railway company permitted the plaintiff to place in their grounds certain quicks conveyed by them, and on the plaintiff calling for the same, the station clerk referred him to the superintendent, who refused to let him have the plants, and the managing director had also refused. A bill of exceptions was overruled to the ruling of the Judge that there was evidence of a conversion, to support an action by the plaintiff to recover possession of the plants in question.

THIS was an action to recover possession of 120,000 quicks, which it appeared the general superintendent of the above company had permitted the plaintiff to place, in order to keep alive, into a piece of their ground. The plaintiff had paid the carriage of the plants, and had afterwards called to take them away, whereupon the station clerk referred him to the superintendent, who refused to let him have them, and the managing director had also refused. On the trial before *Wightman, J.*, the jury were directed that there was evidence of a conversion, and the plaintiff obtained a verdict, whereupon this bill of exceptions to such ruling was tendered and accepted.

Giffard in support, on the ground the permission given by the superintendent was not within his authority, and that the company were not therefore bound thereby or by the subsequent act of the managing director.

Evans and *Grove*, *contra*.

The Court said, that it was the duty of the company to have some person to deal with the exigencies of all cases which might arise, and give directions how to proceed, and it was a question for the jury, whether the superintendent was so appointed by the company. The exceptions would therefore be overruled.

Court of Criminal Appeal.

Regina v. Reason. Nov. 12, 1853.

INDICTMENT FOR STEALING POST-OFFICE LETTER. — "OFFICER."

A letter-carrier, on the request of a post-master, assisted him gratuitously in sorting letters, and stole a letter with 10s. in it: Held, that he had been properly convicted under the 7 Wm. 4, and 1 Vict. c. 36, s. 26, as he was an "officer" within the interpretation clause.

In this indictment against the prisoner as a person employed under the Post-office, for stealing a letter containing the sum of 10s., it appeared that the prisoner was employed to carry the letters in a sealed bag to the post-master at Tybach, and that he had committed the offence in question while sorting letters on being asked by the postmaster. On the trial, at the last Glamorgan assizes, the prisoner was found guilty, subject to this case reserved by *Platt, B.*

Giffard for the prisoner, on the ground the prisoner was performing a gratuitous service, and was not therefore within the 7 Wm. 4, and 1 Vict. c. 36, s. 26.

The Court said, that according to the interpretation clause¹ in the Act, the prisoner was a person employed under the Post-office, and the conviction was confirmed.

Regina v. Vodden. Nov. 12, 1853.

CONVICTION AFTER DISCHARGE UNDER MISTAKE AS TO VERDICT. — REGULARITY OF.

A prisoner was discharged from custody on the clerk understanding the verdict of the jury to be "Not guilty," but on the mistake being discovered, he was taken into custody again and sentenced. The conviction was affirmed.

On this trial for felony, it appeared that the prisoner had been discharged from custody, on the jury being understood by the clerk of the Court to deliver a verdict of "Not guilty," but that he had been taken again into custody on its being discovered that the jury had given an unanimous verdict of "Guilty," and sentenced to two months' imprisonment. The question was, whether the Court had rightly allowed the entry of the verdict to be amended.

Giffard for the prisoner, on the ground the clerk's entry of the verdict was matter of record, and could not be altered.

The Court said, it was clearly a mistake and could be amended, and the conviction was accordingly affirmed.

¹ Which extends the word "officer" to any "person employed in any business of the Post-office, whether employed by the Postmaster-General, or by any person under him, or on behalf of the Post-office."

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SATURDAY, DECEMBER 3, 1853.  
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CONCLUSION OF MICHAELMAS TERM.

BUSINESS OF THE COURTS. — PROFESSIONAL PROSPECTS.

THE commencement of the first Term of the legal year is necessarily a period of speculative expectation. During the Long Vacation, the opportunities for professional communication are limited, and at its close, although each individual may have the means of calculating the number and extent of the claims upon his own attention, he is ignorant how much, or how little, may be doing, or preparing to be done, in his neighbour's office or chambers. At the conclusion of Michaelmas Term, it is altogether different. By that time preparation has given place to action, and the experienced observer is not only enabled to calculate positive results, but to make a fair estimate of what remains to be done.

In the present instance, it must be admitted, that neither the actual results nor the opening prospects are altogether satisfactory. Considering the lengthened period during which legal business was necessarily suspended by the closing of the Superior Courts for the Long Vacation, the cases brought under their consideration, since the commencement of the Term, have neither been numerous nor weighty. From the beginning of Term to its close, no question has been discussed in the Courts either of Law or Equity, which excited in any considerable degree public curiosity or professional interest.

The limited amount of business brought before the Courts during the Term that has just concluded, is not to be ascribed exclusively to the operation of any single cause but to the combination of several. Although it may escape the notice of those

who consider the matter superficially, it will be found, that the quantity of legal business and the consequent prosperity of the Profession, is commensurate with and depends upon the national prosperity. The uncertainty connected with our foreign relations, coupled with the drain of specie consequent upon a deficient harvest, have suddenly raised the value of money, and given a check to commercial enterprise. The effect is quickly felt through all the extended ramifications of a complicated and artificial state of society, and one of its earliest effects is, the diminished amount of legal business. Again, the rapid succession of changes effected of late years in the law, as well as in the practice of the Superior Courts of Law and Equity, has created a sense of uncertainty and doubt which suggests the expediency of avoiding contentious litigation, and compromising or abandoning claims and rights, the enforcement of which would be attended with difficulty. Let us not be supposed to disparage recent improvements, by omitting to mention, amongst the causes which account for the diminution of legal business, the abolition of many useless, and therefore objectionable matters of detail, which were the subject of occasional applications to the Court, and which could only be regarded as inconvenient interruptions to the regular course of judicial investigation.

Whether the causes enumerated sufficiently account for the absence of business or not, it is quite certain that during the past Term the Judges were not over-worked, and many of the practitioners, seniors as well as juniors, had abundant leisure. The attendance of the Lord Chancellor at Cabinet Councils did not, as in the days of former Chancellors, interfere with his lordship's sittings in the Court of Chancery; and the Judges of the Common Law Courts

could hardly find sufficient to occupy them during the ordinary hours of attendance at Westminster, although on one of the last four days of Term, the Judges of the Common Pleas and the Barons of the Exchequer sat in the Exchequer Chamber, and delivered their judgments *seriatim*, upon a question arising upon *scire facias*, as to the validity of a patent granted to the Eastern Archipelago Company, upon which Baron Parke dissented from the conclusion arrived at by all the other Judges.

As it is constantly found, when there are few or no arrears in any of the Courts, and suitors may reckon upon an equally early audience in any Court of co-ordinate jurisdiction, a disproportionate quantity of business flows to one of the Courts. Thus, the favourite Court, at the Equity side, for setting down causes and claims, is the Court of Vice-Chancellor Sir W. P. Wood; whilst amongst the Common Law Courts, judging by the relative number of entries of causes for trial at Nisi Prius during the Sittings in Term, for some inscrutable reason, the Court of Exchequer appears to have become peculiarly popular. The disparity between the number of causes and claims standing for hearing before Vice-Chancellor Wood and those in the papers of the other Equity Judges has been promptly and effectually provided for by two orders,¹ made by Lord Cranworth, under the authority of the Orders of Court of the 5th May, 1837. By the Orders first referred to, dated respectively on the 17th November last, 36 causes standing for hearing before Vice-Chancellor Sir W. P. Wood, were transferred to the Book of Causes for hearing before Vice-Chancellor Sir J. Stuart; and a like number were transferred from Vice-Chancellor Sir W. Page Wood to the Book of Causes of the Master of the Rolls.

It would, perhaps, be desirable that the Lord Chancellor had authority in the same manner to apportion the business between the three Courts of Common Law, so that the anomaly should not again exist, which many who peruse this will recollect, when the Court of Queen's Bench was overwhelmed by the arrears of business which had accumulated, whilst the Court of Common Pleas, with equal judicial strength and corresponding machinery, was comparatively idle. A much smaller proportion of

business now finds its way to the Court of Common Pleas than perhaps might be expected, when it is considered that amongst its Judges there are men of such profound sagacity and legal erudition as Justices Maule and Cresswell. In considering the relative amount of business depending in the Common Law Courts, it must not be forgotten, however, that the abolition of real actions has left the Court of Common Pleas without that jurisdiction which was formerly peculiar to it, whilst the Courts of Queen's Bench and Exchequer, have still exclusive jurisdiction in many matters which actually, or constructively, affect the Crown and the Revenue.

The entry of causes at Nisi Prius for the Sitting after Term in Middlesex, is not so heavy in any of the Courts as might have been expected, from the number of causes set down for trial during the Term. In the Court of Queen's Bench the number of causes entered for the Sitting after Term was 90, of which 32 were remanets. In the Common Pleas there were 58 new causes and eight remanets, and in the Court of Exchequer 56 new causes and 14 remanets; so that no very striking disproportion appears in the relative numbers.

At the close of the next week the Common Law Courts adjourn to the Guildhall, and the Sittings will probably continue until the commencement of the Christmas Vacation.

The most important work which Michaelmas Term has produced is, the New Orders in Lunacy, issued by the Lord Chancellor, with the advice of the Lords Justices, under the authority of the Lunacy Regulation Act, 1853, under which the Orders in Lunacy heretofore in operation, and dated respectively the 27th October, 1842, and the 15th April, 1844, are discharged. As not only all future, but *all pending* proceedings, are to be carried on under the provisions of the New Orders, (dated the 7th November, 1853,) we took the earliest opportunity of submitting them without abridgment to our readers.² The operation and effect of the New Orders, and the changes which they will necessarily produce as to the mode of procedure in matters connected with the care and custody of the persons and estates of lunatics, will be more conveniently considered upon a future occasion.

¹ See the Orders with the Schedule of Causes Transferred, Leg. Obs., Nov. 26, 1853. Postscript.

² See Leg. Obs., Nov. 19, 1853, pp. 44 to 50.

THE QUALIFICATION OF ATTORNEYS.

PROPERTY.—EDUCATION.

WE have received some communications in condemnation of the reduction of the Stamp Duty on Articles of Clerkship, with vehement apprehension that the number of attorneys will be largely increased by the introduction of a lower class of articulated clerks than the present body, who are undoubtedly, for the most part, well-educated and respectable gentlemen. A short time will show as a matter of fact, and not of conjecture, whether there has been any actual increase in the ranks of the Profession consequent upon the abatement of 40*l.* in the amount of the stamp. The articles must be registered, and we shall ascertain at convenient periods the comparative number.

In the meantime it may be recollected, that (if desirable) a rigid application of the present rules and regulations will occasion a much larger outlay than the sum in question, for the purpose of qualifying the candidate to be admitted on the Rolls of the Superior Courts.

In addition to a strict inquiry into the mode of service and the conduct of the clerk during the period of his articles, the Examination may be properly extended, not only into the principles of the Law in all the departments included in the business of an Attorney and Solicitor and the procedure of the Courts, but into the general maxims of our system of Jurisprudence, whether set forth in Latin or Norman French. It was said by the late Lord Ellenborough, when Chief Justice, that since the pleadings and proceedings of the Courts were required to be written in English, the learning of the Profession had declined. If deemed advisable, a knowledge of the Latin and French languages may, to a certain extent, be thus made necessary, although much cannot be said in favour of the classical purity of our Law Latin, or Norman French. This alteration may be effected, with the sanction of the Judges, but without any application to the Legislature.

It is urged, however, by several correspondents, that the most effectual method of excluding uneducated persons from the Profession will be, the institution of an Examination, *before* entering into articles, on subjects of general literature and science, including classics and mathematics. On the other hand, it is anticipated that our

"Free Trade" Parliament will not accede to the proposition of compelling a preliminary Examination,—to pass which the Candidate must remain at school or college till the age of 18 or 19. The Chancellor of the Exchequer, indeed, condemned the "enormous" Stamp Duty of 120*l.*, because it formed a wall or barrier against admission to the Profession; and he emphatically contended for a "freer competition." On this principle, it may be apprehended that the House of Commons, if it should adopt the suggestion of a higher degree of education, will not impose it on the very threshold of the Profession. It may, however, be induced to authorise an Examination into such branches of learning as may usefully bear upon the performance of the duties of an attorney,—allowing them to be acquired (in part at least) during the period of clerkship, and ascertained before admission on the Roll.

Whilst contending for the abolition of the annual tax, as an unjust burthen (although this also partakes of the nature of a property qualification);¹ we have always maintained the expediency of continuing the taxes on Articles of Clerkship and Admissions, more especially as there was no expectation, even if desired, that the Government would give up all the three taxes, and whilst two of them remained, amounting to 84,000*l.* a year, an answer was thereby given to the auctioneers, bankers, and pawnbrokers, who also pay a personal tax. The Chancellor of the Exchequer did not accede to this view; but it would have been absurd, beyond all measure, if the attorneys had rejected the remission of 25 per cent. on the annual tax, because the Government chose also to reduce the entrance fee.

We shall pursue this subject at an early opportunity.

NOTICES OF NEW BOOKS.

The Succession Duty Act, 1853 (16 & 17 Vict. c. 51) *with an Introduction, Notes, and an Index.* By HENRY THRING, M.A., Barrister-at-Law, Fellow of Magdalen College, Cambridge. London: Stevens & Norton, 1853.

MR. THRING was employed as Junior Counsel to Mr. Erle in preparing the Succession Duty Act, and is therefore well-qualified to expound the several provisions of this important measure. His Introduc-

¹ It supposes a man to make a profit of least 400*l.* a year.

tion and Notes are highly valuable. After a brief historical sketch of this branch of taxation, Mr. Thring thus notices the alteration made in the Legacy Duty Acts by the new Statute :—

"The most material alteration in the Legacy Duty Acts, effected by the Succession Duty Act, is the abolition of the technical distinction between leaseholds and other real property. Leaseholds of every denomination are declared to be no longer liable to duty under the Legacy Duty Acts, as personal estate, but are to be hereafter included in the Act under the term of Real Property; which, as will be presently seen, is taxed in a different manner from personal property.

"New Tables are given for the calculation of the value of annuities, both under the Succession Duty Acts and Legacy Duty Acts, and the Tables annexed to the 36 Geo. 3, c. 52, are virtually repealed.

"Another provision may be mentioned, having for its object the alteration of the Legacy Duty Acts in favour of the tax-payer. Under those Acts, when a legacy was given to a son-in-law or daughter-in-law, a stranger in blood to the testator, a duty of 10*l*. per cent. was payable; but by the Succession Duty Act, it is provided that this inconsistency shall cease, and that either husband or wife shall be entitled, in calculating the amount of duty, to take advantage of the nearer relationship of the other to the person from whom the benefit is derived."

The Author then proceeds to explain the nature of the duty imposed by the new Act :—

"It will be recollected (he says), that, under the Legacy Duty Acts, the amount of duty paid is regulated by the relationship of the recipient to the person from whom he derives his benefit. Under those Acts the points between which the line of pedigree was to be traced were easily determined. The property must have passed under a will or an intestacy, and it was only necessary to trace the relationship of the legatee to the testator, or of the next of kin to the intestate to determine the percentage of the duty. This principle of making the amount of tax depend on the degree of relationship is preserved in the Succession Duty Act, but the more comprehensive nature of its scope requires a corresponding expansion of the terms used to denote the persons between whom the relationship regulating the tax was to be traced; accordingly, the term Successor has been adopted to denote the person entitled to any property chargeable with duty; the term Predecessor to denote the settlor, disponent, testator, obligor, ancestor, or other person from whom the interest of the successor is derived; and the term Succession to denote any property chargeable with duty under the Act."

As to the time for the payment of the tax, Mr. Thring says :—

"Having thus disposed of the amount, the Act (sect. 20) declares that the duty shall be paid at the time when the successor, or some person in his right or in his behalf shall become entitled in possession to his succession, or to the receipt of the rents and profits thereof.

"This requirement of possession as a condition precedent to the payment of the tax is carried still further in this Act than in the Legacy Duty Acts. Under those Acts, if a legatee having an interest extending beyond his own life die before his legacy falls into possession, the person who actually receives the legacy at the time of its falling in pays a duty not only on the gift to the original legatee, but on the derivative gift to himself; on the other hand; under the Succession Duty Act, it is provided (sect. 14) that where the interest to any successor in any personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor or successors, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession; the section, however, adds, that such duty shall be at the highest rate which, if every such successor had been subject to duty, would have been payable by any one of them."

On the difficulty arising from the nature of land, the Author observes that :—

"For the purposes of taxation a successor's interest in real property is considered (sect. 21) as an annuity equal in amount to the net produce of the land enjoyed by him for his life, or for any less period during which he may be entitled to the receipt of the rents and profits. The duty thus becomes a tax upon the rent, and not upon the corpus of the land, and as it is payable by four annual instalments, and not in one gross sum, there can never, under ordinary circumstances, be any necessity for a sale of any portion of the property in order to satisfy the demands of the Crown. It is true that by this arrangement a tenant in fee and a tenant for life pay a tax of equal amount; and the Act does not attempt to distinguish between them, except in the event of the tenant for life dying before he has paid all his instalments; in which case all instalments not due at his death cease to be payable, while in the case of a tenant in fee the unpaid instalments continue to be a charge on the property, payable by the owner for the time being. Rules are given for estimating the value of various descriptions of real property. Advowsons are taxable only in the event of their being disposed of for money or money's worth, and personal property directed to be invested in real property, in which the successors take limited interests, is to be treated as real property."

There are several other valuable annotations on the principles of the Act, as well

as its details,—to which we shall hereafter advert, and, for the present, commend this small volume to the attention of our readers.

LAW OF EVIDENCE.

ADMISSIBILITY OF WIFE'S EVIDENCE AGAINST HER HUSBAND.

ON the hearing, it was proposed to read the depositions of the plaintiff, a married woman suing by her next friend for an account of property of her own come to the hands of her husband, the principal defendant. On an objection to such evidence, the late Vice-Chancellor *Parker* observed :—

“ Before the recent Act of Parliament, there would have been two objections to this evidence : one, that she was a party to the suit ; the other was, that she was tendered as a witness against her husband. Either of these would have been a good objection to the evidence being received. But now, by the 6 & 7 Vict. c. 85, it is provided that a witness shall no longer be excluded on account of incapacity arising from interest ; but that Act contained a provision, that it should not render competent any party to any suit, action, or proceeding, individually named in the record, nor the husband or wife of any such party. So that, after Lord Denman's Act, the two objections remained as before. Then came the 14 & 15 Vict. c. 99. The first section of that Act repeals so much of the 6 & 7 Vict. c. 85, as provided that that Statute should not render competent any party to any suit, action, or proceeding, individually named on the record ; but there is nothing in this latter Act to alter the incapacity of a husband or wife. The second clause provides as follows :—that ‘ on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any Court of Justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf any such suit, action, or other proceeding may be brought or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viâ voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding.’ ”

“ A question has arisen upon that section, whether the Act making the parties competent witnesses, a husband or wife is a competent witness ; and it has been decided by very high authority at common law, that their incapacity remains, notwithstanding that Act. It does not appear to me, that any case has been decided like the present, in which the witness herself is a party to the suit, and is examined in that character against her husband. The

cases referred to are, where the witness was not a party, but was examined on behalf of a party. Now, Mrs. Alcock, so far as she is a party, is a competent witness ; but, it appears to me, that her incapacity remains, so far as she is to be examined against her husband. The late Act only removes the objection to this evidence, which arises from the fact of the witness being a party ; but it leaves every other ground of objection untouched. Similar cases might arise. One that occurs is the case of a solicitor, as to confidential communications. His client has a right to say, that his solicitor shall not be examined as a witness against him, to give confidential communications between them in evidence. It may happen that the solicitor might be suing his client, and might tender himself as a witness against him. I think that this Act does not say, that the objection to the solicitor's evidence as to confidential communications, on the ground that he was the solicitor of the party, is one that can no longer be taken by his client.

“ Again the Act says, that a party shall be compellable to give evidence. Suppose a party were required to give evidence as a witness on matters which would expose him to penalties : I think that the Act leaves it open for the party to say, that his evidence would expose him to penalties, and to decline to give the evidence. The same principle applies as to a wife. As to the fourth section of the Act, it provides that ‘ nothing herein contained shall apply to any action, suit, proceeding, or bill in any Court of Common Law, or in any Ecclesiastical Court, or in either House of Parliament, instituted in consequence of adultery, or to any action for breach of promise of marriage.’ It may be said that that section contemplates a particular class of matrimonial suits ; and, that the husband and wife being excluded in such cases, an argument may be drawn from that circumstance, that there was no more extensive exclusion intended by the Legislature than is provided by that clause. I think that view cannot be sustained. That section of the Act seems to me to refer to the subject matter of disputes of a certain kind ; disputes, in which it is thought, for other reasons, not fit that the parties themselves should be examined. That section is open to the same observation as was made on the third section, which says that husband and wife shall not be competent or compellable to give evidence against one another in criminal matters ; and it has been considered in one case, that, in consequence of that section, the former section was to receive a more extended construction, and that it was only in criminal matters that they were not to give evidence against each other. ‘ The Court of Queen's Bench,’ however, took a different view, and considered that the third section was introduced from excessive caution, and that it does not control the meaning of the former section. It appears to me, therefore, that these

¹ See *Stapleton v. Croft*, 16 Jur. 408 ; *Barbat v. Allen*, 7 Exch. R. 409.

is nothing in the Statutes to take away the incapacity of Mrs. Alcock, arising from the fact of her being a married woman." *Alcock v. Alcock*. 5 De G. & S. 671.

REPUTED OWNERSHIP OF BANKRUPT.

ORDER UNDER S. 125.—RELATION BACK.

THE effect of the 125th section of the 12 & 13 Vict. c. 106, that "if any bankrupt, at the time he becomes bankrupt," have in his possession goods, &c., "the Court shall have power to order the same to be sold and disposed of," &c., is (per *Pollock*, C. B.), "to empower the Court of Bankruptcy to make an order with reference to the goods which were in the possession of the bankrupt at the time he became bankrupt; and when the order has been made, it seems to me that we should be introducing a very nice distinction, and one which the Legislature never contemplated, if we were to hold that the order has not the effect of the old assignment, in not having relation back to the act of bankruptcy, but merely to the time when the order itself was made."

Parke, B. — "That 125th section is copied (although not exactly verbatim) from the 21 Jac. 1, c. 19, s. 11; and I think that a clause in one of a series of Statutes upon the same matter ought to be construed, as far as possible, in conformity with the general intention of the Legislature as expressed in former Acts. The section to which I have referred in the Statute of James, no doubt, contained the relation back to the act of bankruptcy. The 13 Eliz. c. 7, which was the preceding Statute upon the same subject, and which regulated the title of the Commissioners appointed by the Lord Chancellor to dispose of the effects of the bankrupt, and made every direction, bargain, sale, and other thing done by them, effectual in law to all intents and purposes against the bankrupt, and against all other persons claiming under him, had the same relation back to the act of bankruptcy. I think that the order of the Commissioner has precisely the same effect, with respect to its relation back, as the title of the Commissioners had under the 21 Jac. 1, c. 19, by which they were empowered to dispose of goods in the possession and reputed ownership of the bankrupt as fully as they could of his other property; and that no subsequent act, either of the bankrupt or of the reputed owner, could defeat their title. There is

no reason why we should not give such effect to the 125th section; for I cannot find any expressed intention on the part of the Legislature to destroy that relation which existed under former Statutes; and it is my opinion, and that of the other members of the Court, that, when the Commissioner made the order disposing of the property in question by sale, such disposition was valid, and had relation back to the time of the act of bankruptcy, unless there be some clause in this Statute by which the goods are protected. But there is no pretence for saying that there is any such clause. I therefore think, that the 125th section is to be construed in conformity with the preceding Statutes upon the same subject, and that the order has relation back to the time of the act of bankruptcy." *Heaslop v. Baker*, 8 Exch. R. 411.

LIVERPOOL LAW SOCIETY.

ANNUAL REPORT OF THE COMMITTEE.

1st November, 1853.

THE Committee have much satisfaction in reporting, that since the last Annual Meeting, the Society has continued to increase in numbers, nine gentlemen having been admitted members; namely, Mr. *Frederick William Howard*, Mr. *William Clare*, Mr. *Frederick William M'Gee*, Mr. *William Henry Moore*, Mr. *Henry Lewis Gregory*, Mr. *Benjamin James Thomson*, Mr. *Robert Paterson*, Mr. *Joseph J. Ritson*, and Mr. *Thomas Rymer*. The Committee have to report the death of one member, Mr. *William Holt*, and the retirement of three other members; namely, Mr. *Wason*, Mr. *Howard*, and Mr. *Reginald A. Parker*, in consequence of changes of residence.

The Society now consists of 118 members, of whom 33 have been admitted since the alteration made in the rule for admission in 1851.

The Committee have devoted much time and attention to the various Bills connected with the administration of Justice, and the Law of Real Property, which have been introduced into the Houses of Parliament during the past year.

Among the Bills which have passed, they may, in particular, refer to the "Liverpool Court of Passage Procedure Act," and to the "Lancashire Court of Chancery Act," both of which are measures calculated to be of great advantage, as well to the Profession as to the Public.

Under the former Act, the practice of the Liverpool Court of Passage has been assimilated (as nearly as possible) to that of the Superior Courts at Westminster; and the Court possesses increased and admirable facilities, for the cheap and speedy administration of Justice.

Under the Lancashire Court of Chancery

Act, and the orders made by the Vice-Chancellor in pursuance thereof, the procedure has been greatly simplified, and the improved practice, introduced of late years into the High Court of Chancery, adopted, and the utility of the local Court much extended. As now constituted, the Court will prove a valuable book to the Public of the district, of which suitors are already beginning to avail themselves, in cases of administration of estates, and other matters of equity jurisdiction. The appointment of a District Registrar in Liverpool, opens to the Profession practising in the Court, the opportunity of personally conducting the causes of their clients, and thereby of bringing them to a speedy issue, and at an expense so moderate, as to allow of the decision of many disputed questions, hitherto compromised out of Court, or abandoned from fear of the disproportionate cost of litigation. The Committee look forward, as the business increases, to further reduction in the scale of Court fees at present payable. In the meantime, so much has been already done for the improvement of the Court, that the Committee feel bound to bring the subject prominently before the Society. Their best thanks are due to the able and zealous Vice-Chancellor, who has received with polite attention all suggestions offered to him by the Committees of the Local Societies, and other practitioners, and acted throughout, with an earnest determination to promote and extend the efficiency of the Court over which he presides. The Committee desire also to express their sense of the exertions of their President, Mr. Wareing, and of Mr. Lowndes, and Mr. Haigh, who acted as a Sub-Committee in considering the various clauses of the Bill, and in the conferences with the Vice-Chancellor.

The members of the Society are aware, that another attempt was made during the last Session, to carry through Parliament, a Bill for the establishment of a Metropolitan Registration of Assurances of Real Property. The Bill introduced was that known as *Lord Campbell's*, but so far altered, that the "Map" or "Plan" scheme was omitted. At a Special Meeting of the Society to consider the Bill, it was resolved, that a petition against the Bill should be prepared, and presented on behalf of the Society, which was accordingly done. Considerable opposition to the Bill was manifested throughout the whole of England, and it was, after passing the House of Lords, referred to a Select Committee in the Commons. The Committee now direct attention to the subject, anticipating that a Registration Bill will probably be introduced in every future Session. The subject is well worthy of the consideration of every member of the Society, especially with reference to the question, whether district registries would not afford all the proposed advantages, without some of the acknowledged objections to the metropolitan scheme. Although the general opinion of the Profession appears to be, at present, against registration, yet it must not be forgotten, that the system has many advocates, in both branches of the Profession and among the Public.

The Committee are happy to observe, that during the past year, a spirit of inquiry has been awakened, as to the best means of raising the professional status. At a meeting of the Society, called to take into consideration a communication from the Secretary of the *Metropolitan and Provincial Law Association*, upon the subject of improved education, various suggestions were made and discussed, and a resolution adopted, which has since been published in the Annual Report of the Association. The Committee are fully convinced, that no measure will so much tend to elevate the Profession as a body, as a well considered application of educational tests. The production of certificates of proficiency in certain branches of general education, to be obtained from constituted examiners, ought to be made a necessary preliminary to entering into articles of clerkship; and at the end of the service, the examination as to professional acquirements before admission upon the rolls, ought to be much more stringent and extensive than under the existing practice. It may then be reasonably expected that men, who have gone through both these ordeals, will at last enter the Profession with the promise of future respectability and public usefulness.

The Committee have, during the last Session of Parliament, originated and forwarded for presentation to the House of Commons, a petition from attorneys and solicitors practising in Liverpool, for a repeal of the Annual Certificate Duty; uniting in this movement with other societies and practitioners, in their efforts to obtain relief from that unjust tax. The result of the struggle is well known. The Chancellor of the Exchequer was, in the end, supported by the House of Commons in his refusal to repeal the tax, and in his own proposal of a small reduction in the amount of it. Considering the large measure of financial reform brought forward by the Chancellor, and the promises for the future, the Committee presume that the general feeling of the Profession will not be one of much surprise or disappointment at the result. A tax which could not be defended on principle, is retained for expediency. The Committee cannot dismiss this subject, without recording their deep sense of obligation to Lord Robert Grosvenor, M. P., for his exertions on behalf of the Profession.

The Committee regret to state that during the past year, an attorney practising in Liverpool, has been convicted of mal-practices. In the discharge of their duty, they have laid the case before the the Council of the *Incorporated Law Society*, who have given directions that an application shall be made for having his name struck off the Rolls.

The Committee have also had occasion to represent to the Council of the *Incorporated Law Society*, another case of alleged professional misconduct, which is still under the consideration of the Council.

The Committee take the opportunity of again urging upon the members of the Society, and through them, upon the Profession generally,

the importance of supporting and acting in conjunction with the Incorporated Law Society, and the Metropolitan and Provincial Law Association. The terms of admission to both Societies are moderate, and they offer the advantages of an organized system in which alone will be found strength, to carry out the good and useful purposes which law societies have in view, in the promotion of honourable practice, and in the protection of their status as professional advisers of the public against the continued attacks which are made every Session by prejudiced persons, who, having risen to political power from their connection with the Bar, appear to use it for the introduction of provisions into every Law Bill, to the prejudice of the attorney and solicitor.

The accounts of the treasurer show a balance of £41. 12s. 6d. to the credit of the Society.

The members of the Committee who go out in rotation are *Mr. Webster, Mr. Snowball, Mr. Thornely, Mr. Bell, and Mr. Bamer.*

PRACTICE ON FORECLOSURE CLAIMS.

PARTIES.—MORTGAGOR'S CREDITORS UNDER DEED ASSIGNING EQUITY OF REDEMPTION.

ON a claim by the first mortgagee against the mortgagor, and the assignees of the equity of redemption in trust for certain scheduled creditors, under a deed which the creditors had executed, containing a power for the trustees to release the equity of redemption without the concurrence of such creditors: *Held*, that the creditors were unnecessary parties. *Thomas v. Dunning*, 5 De G. & S. 618.

ISSUE AS TO NOTICE OF SECOND MORTGAGE.—TAKING PRO-CONFESSO.—TACKING.

At the hearing of a claim by a mortgagee against a second mortgagee and the mortgagors, an issue was directed on the question, whether the claimant had received notice of the second mortgage before he advanced a further sum, which he claimed to tack. The second mortgagee, who was to be the plaintiff therein abandoned the issue: *Held*, that the claimant should give notice of motion to take the issue *pro confesso*, upon which the trial of the issue would be dispensed with and the claim would be in the same situation as if the issue had been tried and found in favour of the claimant. *Hartland v. Dancocks*, 5 De G. & S. 561.

DECREE.—WHERE JUDGMENT CREDITORS OF MORTGAGOR.

On a claim by the first mortgagee against two second mortgagees, several of the mort-

gagor's creditors on judgments duly registered, and the mortgagor: a decree was made for an immediate foreclosure against the first and second mortgagees, and the ordinary decree against all the judgment creditors, treating them as if they formed one incumbrancer, and against the mortgagor. *Steed v. Banks*, 5 De G. & S. 560.

LONDON COMMISSIONERS TO ADMINISTER OATHS.

FORMS OF PETITION, TESTIMONIALS, AND NOTICE.

THE Lord Chancellor's regulations relating to the grant of Commissions to London Solicitors to Administer Oaths in Chancery were stated in our last Number (p. 70, *ante*). The petition to the Lord Chancellor may be in the following form:—

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble Petition of
of in the county of
gentleman.

Sheweth,

That your petitioner was duly admitted a Solicitor in the High Court of Chancery in Term, and has practised as such for ten years and upwards, last past.

That your petitioner has for three years last past and upwards, practised and had his offices within ten miles of Lincoln's Inn Hall, namely, at No. Street, in the parish of in the city of London [or county of].

That your petitioner carries on business in copartnership with under the style or firm of “ ”

That your petitioner is desirous of being appointed a London Commissioner for administering Oaths in Chancery.

And prays your Lordship to confer upon your petitioner such appointment.

And your petitioner will ever pray, &c.

This petition is to be accompanied by *Testimonials* to the following effect:—

We, the undersigned practising Barristers, certify that we know and are acquainted with Mr. of and that we believe him to be a respectable Solicitor, and well qualified for the office of a London Commissioner to administer Oaths in Chancery.

Dated the day of 1883.

We the undersigned Solicitors, who have practised for ten years last past, and upwards, certify that we know and are acquainted with Mr. of and believe him to be a respectable Solicitor, and well qualified for the office of a

London Commissioner for administering Oaths in Chancery.

Dated the _____ day of _____ 1853.

A Notice to the following purport is to be given to the Registrar of Solicitors :—

Take notice that I intend to apply to the Lord High Chancellor to be appointed a London Commissioner to administer Oaths in Chancery.

Dated the _____ day of _____ 1853.

It will be convenient, on giving this notice, to take the petition and testimonials to the Registrar, at the Law Society's Hall, in Chancery Lane, between the hours of 10 and 4, and he will indorse a certificate of the service of the notice. On the expiration of the 21 days, the applicant can apply at the office of the Lord Chancellor's principal Secretary, in Quality Court, Chancery Lane, and obtain the Form of Commission on which a 20s. stamp is to be impressed. No other fee is payable.

CHANGING VENUE.

The Committee of Judges to whom the question was referred as to the practice to be adopted in consequence of Rule No. 18, in the Rules of Practice of Hilary Term, 1853, have to report,

First, that in their opinion it is more convenient as a general Rule, that the application to change the venue by rule or summons may be made before issue joined, provided that this should not prejudice either party from applying after issue is joined to lay the venue in another county, if it shall appear that it may be more conveniently tried in such county.

Secondly, that a defendant, in his affidavit to obtain a rule nisi to change the venue, or in support of summons for that purpose before issue joined, should state all the circumstances on which he means to rely as the ground for the change of venue; but that he may, if he pleases, rely only on the fact that the cause of action arose in the county to which he seeks to have the venue changed, which ground shall be deemed sufficient, unless the plaintiff shows that the cause may be more conveniently tried in the county in which it was originally laid, or other good reason why the venue should not be changed.

(Signed) J. PARKE.
WM. WIGHTMAN.

COUNTY COURTS.

ATTENDANCE OF ATTORNEYS' CLERKS.

As a professional man of some experience, I am enabled to bear testimony to the great and increasing inconvenience sustained by the Pro-

cession by reason of the refusal of some of the County Court Judges peremptorily, and not very civilly, to hear a clerk.

It has not unfrequently happened that both myself and partners have been obliged to attend the Superior Courts, and therefore under the necessity of delegating an intelligent clerk, who has been refused to be heard, and rudely assailed with "stand down," "stand down."

You say, how is a Judge to ascertain the *bond fide* employment of the clerks? Where there is a will there is a way. Let a written authority be given by the principal to one or two of the principal clerks; let it be signed, witnessed, and registered in each County Court in London and the vicinity. Thus the evil might be remedied. Surely, if the Judges of the Superior Courts hear clerks at Chambers, it ought not to be *infra dig.* for the Judges of the Inferior Courts. Trusting that the idea will be carried out.

AMICUS.

NOTES OF THE WEEK.

FURTHER PROROGATION OF PARLIAMENT.

It is this day (25th November) ordered by her Majesty in Council, that the Parliament, which stands prorogued to Tuesday, the 29th day of November inst., be further prorogued to Tuesday, the 3rd day of January next.

COMMISSIONERS FOR REFORMING THE LAW AND PRACTICE OF INDIA.

The Queen has been pleased to appoint the Right Hon. Sir John Romilly, Knight, Master of the Rolls of her Majesty's High Court of Chancery; The Right Hon. Sir John Jervis, Knight, Chief Justice of her Majesty's Court of Common Pleas; The Right Hon. Sir Edward Ryan, Knight; Charles Hay Cameron, Esq.; John M'Pherson M'Leod, Esq.; John Abraham Francis Hawkins, Esq.; Thomas Flower Ellis, Esq.; and Robert Lowe, Esq., to be her Majesty's Commissioners in England to examine and consider the reform of the Judicial Establishments, Judicial Procedure, and Laws of India.

SCOTCH LAW APPOINTMENT.

The Queen has been pleased to appoint David Mure, Esq., Advocate to be Sheriff of the Shire or Sherifdom of Perth, in the room of James Craufurd, Esq., her Majesty's Solicitor-General for Scotland.

ADMIRALTY REGISTRAR.

The Queen has been pleased to direct letters patent to be passed under the Great Seal, for appointing Henry Cadogan Rothery, Esq., M. A., Registrar of the High Court of Admiralty of England, to be Registrar of her Majesty in Ecclesiastical and Maritime Causes, in the room of Henry Birchfield Swabey, Esq., resigned.—From the *London Gazette* of 29th November.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

(Coram Lord Chancellor and Lords Justices.)

Wallis v. Bastard. Nov. 21, 1853.

MORTGAGOR AND MORTGAGEE.—PURCHASE OF EQUITY OF REDEMPTION BY MORTGAGEE.—SET-OFF OF MORTGAGE DEBT.

*Certain property which was mortgaged for 2,000*l.*, was purchased with other property for 2,700*l.* by the mortgagee, who paid the deposit and entered into possession. It was provided by the conditions of sale, that interest at 4 per cent. should be paid on the balance of the purchase-money after December 21: Held, on appeal from Vice-Chancellor Stuart, that the mortgagee was entitled to set-off the amount of the mortgage debt against the purchase-money, and that interest at 4 per cent. was payable on the balance to be found due after such deduction.*

On this appeal from Vice-Chancellor Stuart, it appeared that Mr. John Wallis had mortgaged certain property at Bodmin for 2,000*l.*, and at his death the plaintiffs were appointed trustees under his will. The mortgage was transferred in 1841, to a Mrs. Sarel, who also afterwards purchased in 1842 by the defendant, as her agent, the mortgaged together with other property for 2,700*l.*, under conditions of sale, which provided for the payment of 10 per cent. deposit and interest at 4 per cent. on the remainder if the purchase were not completed by the 21st Dec. following. Mrs. Sarel paid the deposit, and afterwards entered into possession on that day, but had not completed the purchase. The Vice-Chancellor having on this claim, for the specific performance of the contract, held that Mrs. Sarel was entitled to 5*l.* per cent. interest on the mortgage debt of 2,000*l.*, and that 4*l.* per cent. was to be paid on the balance of purchase-money, and the amount due on the mortgage to be set-off against the sum due on the purchase, this appeal was presented.

Malins and Moxon in support; *James and Bird*, contra.

The Court said, the mortgage debt ought to be set-off against the purchase-money, and an account would be directed of the amount of purchase-money remaining unpaid, and such balance be charged with interest at 4 per cent. from the time of the purchase, and varied the decree of the Court below accordingly.

Lord Chancellor.

Allen v. Coppard. Nov. 17, 1853.

FORECLOSURE CLAIM.—MORTGAGE.—SURETY.

*Certain property was mortgaged by the defendant as a collateral security for the advance by the plaintiff of a sum of 600*l.* to G., of which 300*l.*, the amount of a bill en-*

dorsed by the plaintiff, had been only paid by G.: Held, dismissing with costs an appeal from Vice-Chancellor Wood, that the plaintiff was entitled on a claim, as against the defendant, to foreclose.

This was a claim to foreclose a mortgage on certain premises at Horsham, given by the defendant as a collateral security for the advance by the plaintiff of a sum of 600*l.* to a Mr. Gates. It appeared that 300*l.* was still due, the bill which the plaintiff had endorsed for the remainder having been duly paid by Mr. Gates. The Vice-Chancellor Wood having decreed as prayed, this appeal was presented.

Rolt and Howard C. Ward for the plaintiff; *Glasse and C. Hall* for the defendant, on the ground Mr. Gates was the real borrower, and the defendant merely a surety.

The Lord Chancellor said, the question was, not the arrangement between the defendant and Mr. Gates, but the agreement between them and the plaintiff; and the appeal must be dismissed, with costs.

In re Lott's Patent. Nov. 25, 1853.

PETITION FOR SEALING PATENT.—EVIDENCE OF PRIOR INVENTION NOT BEFORE SOLICITOR-GENERAL.—COSTS.

On a petition for sealing a patent under a warrant from the Solicitor-General, it appeared from facts not before that officer, that H. had communicated to the petitioner the particulars of an invention by him with the same object, although the precise mode was not then fully determined of carrying it out, and for which a provisional registration had been effected prior to the date of the petitioner's specification. The petition was dismissed, but without costs.

Dewry appeared in support of this petition to seal a patent for an invention in making gun cartridges, in order to obviate the necessity of biting off the end, and consisting of a collapsing chamber in the cartridge to hold the powder, which would, by the action of the ramrod thus run into the breech of the gun. It appeared a warrant for sealing had been issued by the Solicitor-General.

Haddan, contra, on the ground the invention had been discovered previously to the date of the petitioner's specification by Mr. Haddan, who had registered his provisional specification, and that he had communicated to the petitioner the nature of the invention, stating it to be by making one end of the cartridge weaker than the other, although the mode for bursting the cartridge, whereby it was to be carried out, was not finally determined.

The Lord Chancellor said, that if the facts adduced had been before the Solicitor-General, he would have decided the inventions were substantially the same, and as the petitioner was not the original inventor, his petition must

be refused, but, under the circumstances, without costs.

In re Moss, ex parte Bainbrigge. Nov. 25, 1853.

ENROLMENT OF DECREE.—VACATING ON GROUND OF IRREGULARITY OR IMPROPRIETY.

Held, that the enrolment of a decree will not be vacated, unless irregularity or impropriety be shown in obtaining such enrolment, and where, therefore, the circumstances did not establish a case on those grounds for the interference of the Court, a motion was dismissed with costs, to vacate the enrolment of a decree.

Held, also, that the order in the Court below could have been rectified by enumerating therein the evidence used there, at the applicant's expense.

J. V. Prior appeared in support of this motion to vacate the enrolment of an order made by the Master of the Rolls on July 27 last, dismissing with costs the petition of Mr. Thomas P. Bainbrigge, for the taxation of Mr. Moss's bill of costs, on the ground the order did not enumerate the whole of the evidence used in the Court below. It appeared from the affidavit of Mr. Moss's solicitors, that they had attended the Registrar on August 8, to draw up the order, according to appointment, and had waited the requisite time, and that on Mr. Bainbrigge's solicitor not attending, they had given instructions for the order to be drawn up and passed.

The Lord Chancellor (without calling on the Solicitor-General and Webster, contra, who consented the evidence should be used on appeal) said, that as no irregularity or impropriety had been shown in obtaining the enrolment, it could not be vacated, and it was unnecessary, after the offer of the respondent to rectify the order, which would have been permitted at the applicant's expense. The motion would, therefore, be dismissed, with costs.

Lords Justices.

Horwood v. Griffith. Nov. 12, 25, 1853.

REQUEST.—CONSTRUCTION.—SPECIFIC.—ADMISSION OF PAROL EVIDENCE.—COSTS.

A testatrix gave in trust, as mentioned by her will, the sum of "2,000*l.* Spanish bonds or coupons now belonging to me, and all dividends or interest which shall be due thereon at the time of my decease." The bonds, of which the testatrix held four, were of the nominal value of 1,000*l.* each, and were purchased by the Spanish Government under a power reserved for 600*l.* each: Held, dismissing an appeal from Vice-Chancellor Stuart, that the gift was a specific bequest of two of the bonds and not of a sum of money to the amount of 2,000*l.*—The costs of all parties were directed to come out of the estate.

Held, also, that parol evidence was not admissible to show the intention of the testatrix to give all the bonds.

THE testatrix, by her will, gave to two trustees therein-named, the sum of "2,000*l.* Spanish bonds or coupons now belonging to me, and all dividends or interest which shall be due thereon at the time of my decease," in trust for Harriet Barry for life, with a power of appointment, and in default thereof to her residuary legatee. It appeared that the testatrix, on her death, held four bonds of the nominal value of 1,000*l.* each, but which were redeemable by the Spanish Government on payment of 550*l.* within three years, or of 600*l.* afterwards. The bonds were redeemed for 600*l.* each, and the amount was paid to the executors. The Vice-Chancellor Stuart having held the bequest extended only to two bonds, this appeal was presented.

Roll, and J. J. Jervis in support; Malins, T. H. Terrell, Walker, and Horace M. Wright, contra.

Cur. ad. vult.

The Lords Justices said, the legacy was specific, and parol evidence was therefore inadmissible to show the testatrix intended to express a gift of the whole bonds, and the appeal must be dismissed—the costs of all parties to come out of the estate.

Master of the Rolls.

Eld v. Durant. Nov. 19, 1853.

MARRIAGE SETTLEMENT.—CONSTRUCTION.—ELDEST SON AND ISSUE.—EXCLUSION OF FROM TRUST.

Certain property was, by a marriage settlement, settled in trust for the children, except a son, or the issue of a son, who should be eldest son when he attained 21 and entitled to the T. estate. The eldest son attained 21, but died in the settlor's lifetime, and therefore without entering into possession of the T. estate: Held, nevertheless, that his issue were excluded from the trust.

By the marriage settlement of Mr. George Durant, of Tory Castle, Shropshire, certain property was settled in trust for all the children, except a son, or the issue of a son, who should be eldest son when he attained the age of 21 and should be entitled to Tory Castle. It appeared that the eldest son attained 21, but died in the settlor's lifetime, leaving a son and two daughters, whereupon this question arose, whether such issue were entitled to the share of the settlor's son in the settled property, as the son had never come into possession of Tory Castle.

Teed, Roupell, R. Palmer, Hallett, Greene, Prior, J. Hinde Palmer, H. Stevens, Holt, and Burton for the several parties.

Livesey v. Livesey, 2 H. of L. 619; 13 Sim. 33, was cited.

The Master of the Rolls said, that in accord-

ance with the case cited, such issue was excluded.

Jennings v. Jennings. Nov. 22, 1853.

PARTNERSHIP.—DISSOLUTION.—RECEIVER.—UNAUTHORISED BORROWING ON PARTNERSHIP CREDIT.

A decree was made for the dissolution of a partnership and a receiver appointed, where two of the partners (the defendants) had borrowed money on the partnership credit, without the knowledge or consent of the plaintiff, and applied the same to purposes unconnected with the partnership, notwithstanding such loans had been repaid by the defendants.

THIS was a suit for the dissolution of a partnership between the plaintiff and the defendants, on the ground that they had obtained sums of money on the partnership credit without his knowledge or consent, and applied the same to uses unconnected with the partnership. It appeared, however, that the moneys borrowed had been since repaid by the defendants.

Roupell, Lloyd, R. Palmer, Shebbeare, Jolliffe, and Hitchcock for the several parties.

The Master of the Rolls said, that the plaintiff was entitled to a dissolution, and a decree was accordingly made and a receiver appointed.

Vice-Chancellor Kindersley.

Waller v. Vigners. Nov. 22, 1853.

CLAIM.—SPECIFIC PERFORMANCE OF AGREEMENT IN PENCIL.—SIGNATURE.—PART PERFORMANCE.—COSTS.

An agreement for a lease was written in pencil in the plaintiff's memorandum book, and was signed by the defendant on the top of the next page, and it was agreed certain additions and improvements were to be made, towards which the defendant was to pay 25l. The defendant paid that sum, but refused to complete on certain disputes arising, ultra the contract, as to repairs. A decree was made on claim for a specific performance, but without costs, on the ground the plaintiff had required more than was stipulated for in the agreement.

THIS was a claim for the specific performance of an agreement for a lease, which was written in pencil in the plaintiff's memorandum book, and whereby he agreed to let, and the defendants to take, certain premises at Putney for 3, 5, or 7 years from Midsummer next, at 100l. per annum, and it was also agreed that the defendant should pay 25l. towards the expenses of certain specified additions and improvements. Disputes afterwards arose on the question of repairs extra the agreement, and the plaintiff had brought an action for the 25l. mentioned in the contract, which had been paid by the defendant.

Elmsley and Lewis for the plaintiff; *Baily and Money* for the defendant.

The Vice-Chancellor said, it was unnecessary

to consider the objection as to the defendant's signature being on another page to that on which the contract was written, as the agreement had been acted upon by both the parties; and the plaintiff was therefore entitled to a decree, but without costs, as he had required more than was stipulated for in the agreement.

Vice-Chancellor Wood.

Norton v. Steinkopf. Nov. 16, 1853.

SETTLEMENT.—SUIT FOR EXECUTION OF TRUSTS.—DECREE ON MOTION FOR PAYMENT INTO COURT OF TRUST FUND.

A trust fund in the hands of the defendant, a trustee, was called in under the deed of settlement, but it appeared the defendant had failed and had arranged with the greater part of his creditors. A suit was then instituted by the other trustee to have the trusts of the settlement executed by the Court. A motion for a decree was granted for payment by the defendant of the amount into Court on or before the 1st day of Hilary Term.

It appeared that a sum of 1,200l., in the hands of Messrs. Quarles Harris, & Co., had been assigned, upon her marriage, in trust for the settlor for life, with remainder to her children by a previous marriage, and to permit the fund to remain where it then was until she should request the trustees, who were Mr. Quarles Harris and the plaintiff, in writing to call it in. In January, 1852, she accordingly requested the trustees so to call it in, but on the plaintiff applying for its repayment, it appeared the firm had stopped payment, and that a letter of license had been executed by a large portion of the creditors, and that a dividend of 3s. in the pound was ready to be paid, together with a further dividend. This suit was therefore instituted to have the trusts of the settlement executed by the Court, and a motion for a decree was now made for payment of the fund into Court.

De Gez for the plaintiff; *Rolt and Eddis* for the settlor; *Russell* for Mr. Quarles Harris, contra.

The Vice-Chancellor said, that as the relief sought was incident to the prayer of the bill, and a motion for a decree was equivalent to the hearing of the cause, a decree would be made for payment of the money into Court on or before the 1st day of next Term.

Court at Queen's Bench.

Cordy and others v. Bentley. Nov. 4, 1853.

CHURCH-RATE.—MADE BY MINORITY OF VESTRY.—PROHIBITION; RULE ABSOLUTE FOR.—COSTS.

A rule for a prohibition to the Archdeacon Court in a suit for subtraction of church-rate made by the minority in a vestry, had been enlarged until after the decision of the House of Lords on a similar question. In

the Term following such decision, and on its being admitted the cases were not distinguishable, the rule for a prohibition was made absolute but without costs.

A *RULE nisi* had been obtained on Nov. 13, 1851, for a prohibition against the Churchwardens of Brighton from further proceeding in the above suit in the Court of Arches for subtraction of church-rate, but it was enlarged on Nov. 25 following, until after the decision of the cause of *Gosling v. Veley* in the House of Lords (reported as to the Courts below, 7 Q. B. 406; 12 Q. B. 328). It appeared that the rate had been made by a minority of the parishioners in vestry assembled, and by the recent decision in *Gosling v. Veley* was therefore void.

Sir F. Kelly and Badeley for the plaintiffs, admitted the case was undistinguishable from the case in the House of Lords, and agreed to abandon the rate.

Keating, J. Stammers, and J. Brown applied for the costs.

The Court said, that different tribunals had decided different ways, and the rule would be made absolute, without costs.¹

Regina v. Lewis. Nov. 19, 1853.

POOR-RATE. — LIABILITY OF TOLLS RECEIVED ON QUAY. — AMENDMENT OF CASE. — TITLE OF LESSORS:

A case from the Quarter Sessions, under the 13 & 14 Vict. c. 45, as to liability of tolls, levied by the defendant on merchandise at a quay, to be rated for the relief of the poor, was directed to be amended, in order to show whether the tolls were taken in respect of the use of the soil, in order to add a statement of how the property came into the possession of the defendant's lessors.

THIS was a case under the 13 & 14 Vict. c. 45, on appeal from the Quarter Sessions, as to the defendant's liability to be rated to the relief of the poor in respect of certain dues or tolls levied on merchandise landed on, or shipped from, certain quays at Swansea. It appeared that the occupiers had been rated in respect of their occupation, and the defendant, who was lessee under the corporation, of the quays held by them for the use of the public, had been rated for the ownership of the tolls.

Pashley in support of the rate, on the ground the tolls constituted an occupation of the land under the 43 Eliz. c. 2, citing *Res v. Macdonald*, 12 East, 324; *Res v. Nicholson*, ib. 330; *Attorney-General v. Jones*, 1 M'N. & G. 574.

Willes, contra, on the ground the toll was not connected with the occupation of the land, but a toll thorough, was stopped by the Court.

The Court said, the case must be amended

in order to state how the land came into the possession of the corporation from the ancestors of the lord of the manor, for the purpose of showing whether the toll was or was not taken in respect of the use of the soil.

Esparte Buckland. Nov. 21, 1853.

COUNTY COURT. — RULE ON OFFICERS OF, TO REFUND SUM UNDER EXECUTION. — SUMMARY JURISDICTION. — ACTION.

Held, that a rule on the high bailiff and clerk of a County Court to refund a sum under an execution on goods exempted from seizure, will not be granted, but an action must be brought.

THIS was a motion for a rule nisi on the high bailiff and clerk of the Clerkenwell County Court to refund with costs the sum of ten guineas on the ground the goods taken in execution were exempted from being seized.

Duncan in support.

The Court said, the case could not be dealt with on a summary application, but that an action must be brought, and the rule was therefore refused.

Macrae v. Maclean. Nov. 21, 1853.

ARBITRATOR. — POWER TO AWARD COSTS OF AMENDMENT IN AWARD.

An amendment in an award was obtained by the defendant on a reference back under a power in the order of reference, which also directed the costs to be in the discretion of the arbitrator: Held, discharging a rule nisi, without costs, to set aside such portion of the award, that the arbitrator had jurisdiction to order the costs of the amendment to be borne by the defendant.

THIS was a rule nisi to set aside so much of an amended award as directed the defendant to pay the costs of the amendment, which was obtained by him on the ground of an omission in the award. It appeared that in the original order of reference the costs were in the discretion of the arbitrator.

J. Brown showed cause against the rule; *Kenne* in support.

The Court said, the amended award was made in virtue of the original order of submission, which gave the power of reference back, and the arbitrator had therefore authority to make the order as to the costs of amendment. The rule would be discharged, but, under the circumstances, without costs.

Court of Common Pleas.

Morgan v. Cashman. Nov. 16, 1853.

FACTOR AND PRINCIPAL. — BANKRUPTCY OF FACTOR. — ACTION FOR GOODS SOLD AND DELIVERED. — SET-OFF.

Certain goods had been sent by the plaintiff to G., a factor, for sale, and were purchased by the defendant, the purchase-

¹ See also *Res v. Keating*, 1 Dowl. 440; *Pentons v. Harvey*, 1 B. & Ad. 154.

money thereof being set-off against the value of other goods sent by the defendant, which had been also sold by G. It appeared G. had been adjudged a bankrupt on the plaintiff's petition in respect of the goods: Held, that as the set-off did not amount to a payment by the defendant to the plaintiff, he was therefore entitled to recover in an action for goods sold and delivered.

THIS was a rule nisi obtained on Nov. 5 last, on leave reserved, to set aside the verdict for the plaintiff and enter it for the defendant, in this action, which was brought for goods sold and delivered. It appeared that the plaintiff, a farmer, had sent the goods in question to a factor named Golding, and that they were bought by the defendant, a dealer, their value being set-off against the proceeds of some cheeses which Golding had sold for the defendant. Golding was afterwards adjudged bankrupt on the petition of the plaintiff, for the amount of the proceeds of the goods. On the trial the verdict passed for the plaintiff, subject to this motion.

M. Chambers. and *Hawkins* showed cause; *Lush* and *T. Chambers* in support, on the ground the defendant had, in point of fact, paid the bankrupt for the goods, and could not, therefore, be sued.

The Court said, that the transaction did not amount to a payment by the defendant to the plaintiff, and the rule was therefore discharged.

Moorhouse, app.; *Gilbertson*, resp. Nov. 17, 1853.

REGISTRATION OF VOTERS.—PAYMENT BY LANDLORD OF TENANT'S RATES.—DEDUCTION FROM AMOUNT OF QUALIFICATION.

Held, that where the landlord paid the poor-rates, water-rate, and local board of health rate, their amount was to be deducted, in calculating the annual value as a qualification to be on the list of voters, from the rent, inasmuch as they were tenant's rates.

THIS was an appeal from the decision of the revising barrister for the Northern Division of Lancashire expunging the name of a Mr. Rawlings from the list of voters. It appeared he claimed to be qualified from certain freehold property at Preston, which he held jointly with other persons and let at rents of 40s. each house. It also appeared, however, that Mr. Rawlings agreed to pay the amount of the poor-rates, water-rate, and local board of health rate.

E. James in support, on the ground such payments of the tenant's rates were voluntary and were not to be deducted in calculating the annual value.

Bytes, S. L., contra.

The Court said, that the interest in the property in question was subject to an agreement to pay a charge for which the tenants were legally liable, and which was not one on the property within the exception in the Act, and

the amount of the rent was only after the deduction of what the landlord had agreed to pay, and which was the same as if he had agreed to receive such less sum. The value of the rent was not therefore 40s. a year, and the appeal must be dismissed with costs.

Earl of Mountcashell v. Barber. Nov. 21, 1853.

ACTION FOR CONTRIBUTION AGAINST COMMITTEE-MAN OF CLUB.—EVIDENCE.—AUTHORISING LOAN.

On the trial of an action to recover contribution from a committee-man in respect of a judgment debt paid by the plaintiff. Evidence was admitted of the defendant's having acted on the committee, and that he had authorised the contract of the loan and ratified it afterwards, in respect of which such judgment had been obtained: Held, on special case, that such evidence was properly admitted, and that the plaintiff was entitled to judgment.

THIS was a special case for the opinion of this Court. The action was brought for money paid, to recover contribution from a member of the Committee of the Colonial Club towards a judgment at the suit of the Commercial Bank, which the plaintiff had paid. It appeared that a sum of 3,000*l.* had been borrowed on the personal security of the Committee in pursuance of a resolution at a meeting of which the defendant was chairman, and subsequently a further sum of 4,000*l.* on the credit of the society was proposed to be borrowed at a meeting at which the defendant was also present, and he likewise attended the annual meeting at which the proposal was adopted. It also appeared that the defendant had seen the credit of 4,000*l.* in the pass book, and had drawn and signed cheques in respect of such credit. The bank having sued the plaintiff for the 4,000*l.*, and obtained judgment, the plaintiff had been obliged to pay a sum of 2,500*l.* in addition to the contribution amounting to 100*l.*, which had been paid by each of the Committee (of whom there were 26), and this action was brought to recover contribution from the defendant towards the additional sum paid by the plaintiff.

Lush for the plaintiff; *Bramwell* for the defendant.

The Court said, that the evidence of the defendant's having acted on the Committee was receivable in evidence against him in this action, and that he had sufficiently authorised the contract of the loan, and ratified it afterwards, and the plaintiff was therefore entitled to judgment.

Lewis v. Collard. Nov. 25, 1853.

ATTORNEY.—ACTION FOR BILL OF COSTS FOR PREPARING DEED OF ASSIGNMENT FOR BENEFIT OF CREDITORS.

An attorney had prepared a deed of assign-

ment for the benefit of the defendant's creditors after his petition in bankruptcy, and the commission of an act of bankruptcy: Held, that as assurances had been received of the creditors' concurrence therein, the plaintiff was entitled to recover the amount of his bill of costs for preparing such deed, which would be valid, and tended to save expense.

THIS was an action by an attorney to recover the amount of his bill of costs for preparing a deed of assignment of the defendant's goods in trust for the creditors. It appeared the deed was prepared after the defendant had petitioned the Court of Bankruptcy and an act of bankruptcy had been committed. On the trial, at the Guildhall Sittings, before *Cresswell, J.*, the plaintiff obtained a verdict, subject to this motion.

E. James in support.

The Court said, as the plaintiff had received assurances that the creditors would concur in the transaction, and under such circumstances the deed would be valid and save expense, there was no ground for imputing ignorance or negligence to the plaintiff in his profession as an attorney, and the rule would be refused.

Court of Eschequer.

De Crespigny v. De Crespigny. Nov. 21, 1853.
ACTION ON COVENANT IN SEPARATION DEED TO MAINTAIN DAUGHTERS.—LIMITATION OF, ON ATTAINING 21.

The defendant covenanted in a deed of separation to maintain, educate, and support his three daughters, in consideration of their being left, and so long as they were left in his care, custody, and control: Held, on demurrer to the plea in an action on this covenant, that the defendant's liability continued, although the daughters had attained the age of 21.

THIS was an action on a covenant in a deed of separation, whereby the defendant covenanted to maintain, educate, and support his three daughters, in consideration of their being left, and so long as they were left in his care, custody, and control, with the exception of such periods during which they should visit their mother. It appeared the daughters were now of age, and the question arose on a demurrer to a plea, whether the defendant's liability still continued.

Pashley for the plaintiff in support of the demurrer; *Hill* for the defendant, contra.

The Court said, the covenant was not limited by any such condition as that now sought to be introduced, and the plaintiff was therefore entitled to judgment.

White and another v. Blewitt. Nov. 21, 1853.
ACTION BY EXECUTORS ON PROMISSORY NOTE.—PLEA OF DISCHARGE.—NUDUM PACTUM.

The defendant pleaded, in an action on a pro-

missory note by his father's executors, that his father had discharged him from payment in consideration of his abstaining from complaints as to the unfair distribution of his property among his children: Held, on demurrer to this plea, that the agreement was nudum pactum, and the plaintiffs were entitled to recover.

THIS action was brought by executors to recover the amount of a promissory note given by the defendant as a security for a loan from the testator, who was his father, to which the defendant pleaded that he had been discharged from payment of the note in consideration of his abstaining from repeating complaints of the unjust distribution by his father of his property among his children. To this plea there was a demurrer on the ground the agreement was without consideration and not binding.

Bovill, for the plaintiffs, in support of the demurrer; *Clark* for the defendant, contra.

The Court said, there was no consideration for the agreement alleged in the plea, as it was not binding either on the father or the son, and was entirely a nudum pactum. The demurrer would therefore be allowed, and judgment be given for the plaintiffs.

Viner v. Hawkins. Nov. 25, 1853.

INSOLVENT.—REMAND IN RESPECT OF JUDGMENT DEBT.—DISCHARGE ON JUDGE'S ORDER.—ACTION TO RECOVER SUM PAID.

An insolvent was remanded for seven months, in respect of a promissory note due to the defendant, on which judgment had been obtained. The defendant then issued a ca. sa. under the 1 & 2 Vict. c. 110, s. 85, but agreed to his discharge on a Judge's order for payment of a certain sum, and the remainder by instalments. The sum was paid and the discharge took place. The insolvent then brought an action to recover back the sum so paid: Held, that he was not entitled to recover.

It appeared that the plaintiff had been discharged under the Insolvent Debtors' Act, from all his debts forthwith, and as to a sum of 59*l.*, the amount due to the defendant on a bill he had accepted, and in respect of which a judgment had been obtained, he was remanded for seven months from the date of the vesting order, on the ground such debt had been fraudulently contracted. The defendant then issued a ca. sa. under the 1 & 2 Vict. c. 110, s. 85, against the plaintiff, who obtained his discharge on consenting to a Judge's order for payment of a sum down and the remainder by fixed instalments. This action was afterwards brought to recover a sum of 15*l.*, the amount of the first payment, as money had and received by the defendant to the plaintiff's use. On the trial before *Martin, B.*, a nonsuit passed, and this rule nisi had been obtained to set it aside and for a new trial.

Knowles and Dawson showed cause; *Hawkins* in support.

The Court said, the payment was voluntary and made under a full knowledge of the facts. The detaining creditor had power to arrest the insolvent on a *ca. sa.* under the Statute, and the debtor was enabled either to give bail or pay the debt. He had chosen the latter alternative, and could not now recover back the amount so paid. The rule must therefore be discharged.

Court of Criminal Appeal.

Regina v. Stone. Nov. 19, 1853.

PERJURY ASSIGNED ON AFFIDAVIT IN ADMIRALTY COURT SWORN BEFORE MASTER EXTRA, IN CHANCERY.—JURISDICTION.

Held, that a Master Extra. in Chancery has not such jurisdiction to take affidavits in the Court of Admiralty as to support an indictment for perjury thereon, and a conviction was reversed.

THIS was a point reserved for the opinion of this Court, on an indictment for wilful and corrupt perjury in an affidavit in the Court of Admiralty in a salvage case. It appeared on the trial before *Erle, J.*, at the last York Assizes, that the affidavit was sworn before a Master Extra. in Chancery, and that it was the practice of the Court of Admiralty to receive affidavits so sworn. The defendant was convicted, subject to this point reserved.

Cross for the defendant.

T. Perronet Thompson and *W. Digby Seymour* in support of the conviction.

The Court said, that a Master Extra. had no authority to administer the oath in the Admiralty Court, and that the fact of such affidavits being acted on in that Court did not confer the authority. Although, therefore, the offence might amount to a misdemeanor for attempting to impose on the Admiralty Court, it was not perjury, and the conviction was accordingly reversed.

Regina v. Bailey. Nov. 19, 1853.

INDICTMENT FOR POSSESSION OF HOUSE-BREAKING IMPLEMENTS.—EVIDENCE OF INTENTION TO COMMIT FELONY.

A prisoner was indicted under the 14 & 15 Vict. c. 19, of having been found at 12 o'clock at night with implements of house-breaking in his possession without lawful excuse. There was no evidence of an intention to commit a felony. The conviction was confirmed.

It appeared that the prisoner had been indicted under the 14 & 15 Vict. c. 19, s. 1,¹ of

¹ Which enacts, that "if any person shall be found by night having in his possession, without lawful excuse (the proof of which excuse shall lie on such person), any "implement of house-breaking" "shall be guilty of a misdemeanor."

having been found at 12 o'clock at night with certain implements of housebreaking in his possession without lawful excuse. On the trial, at the Middlesex Sessions, in October last, the prisoner was found guilty of the possession, but the jury found there was no evidence of an intent to commit a felony, whereupon the point was reserved, whether the conviction was valid.

Huddleston for the prosecution.

The Court said, the conviction must be confirmed.

Court of Bankruptcy.

(Coram Mr. Commissioner Goulburn.)

In re Williams. Nov. 28, 1853.

BANKRUPT LAW CONSOLIDATION ACT.—CHOICE OF ASSIGNEES.—WHEN JOINT AND SEPARATE PETITIONS.

After a petition for an adjudication against a bankrupt, an adjudication issued against his co-partners: Held, that the meeting for the choice of assignees in the separate bankruptcy must be adjourned until the choice under the joint petition, under the 12 & 13 Vict. c. 106, s. 98.

In this case it appeared that since the adjudication against the above bankrupt, who traded in partnership with two other parties, an adjudication had also been obtained against such other partners, but that they had not surrendered. It was now proposed at this first sitting for proof of debts and choice of assignees on the former petition, to proceed to such choice under the bankruptcy, and on the other petition coming on to obtain an order to annex the proceedings therein under the 12 & 13 Vict. c. 106, s. 98.¹

Sheard in support.

The Court said, the proper course was, to adjourn the choice until the choice should be made in the joint petition, leaving the estate in the meanwhile in the hands of the official assignee, and the matter was accordingly adjourned.

¹ Which enacts, that "after a fiat issued, or a petition for adjudication of bankruptcy filed, against or by one or more member or members of a firm, any petition or petitions for adjudication of bankruptcy against or by any other member or members of such firm, shall be filed and prosecuted in the Court in which the first fiat or petition was presented: and immediately after the adjudication under such other petition or petitions, all the estate, real and personal, of such bankrupt or bankrupts shall vest in the official assignee and the creditors' assignee (if any) under the first fiat or petition; and thereafter all separate proceedings under such petition or petitions shall be stayed; and such petition or petitions shall, without affecting the validity of the first fiat or petition, be annexed to and form part of the same."

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SATURDAY, DECEMBER 10, 1853.  
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THE APPROACHING SESSION OF PARLIAMENT.

NEW COMMISSIONS.

THE unparalleled number of Commissions now in active operation, for the purpose of inquiring into and reporting upon various branches of the law, with a view to alteration and improvement, has been repeatedly a subject of comment in these pages, as it is a topic of general observation in all circles of the Legal Profession.

That inquiries will, in general, be most advantageously conducted by those who have some practical acquaintance with the subject-matter of investigation, can hardly be disputed. It may also be conceded, that an unreserved interchange and comparison of sentiment between those who have extensive experience in the working of any branch of the law or its administration, is well calculated to develop existing evils, and to suggest the appropriate remedy. In short, no one denies that many useful measures of legal reform have emanated from Commissions; but the multiplication of Commissions will become a just subject of complaint, if by this device those in authority seek to throw from their own shoulders the responsibility incidental to official position, and to fix it upon those who are not the servants of the public, and have, properly speaking, no public functions to discharge. No doubt it is convenient, when inquiries are made in Parliament, with respect to the intentions of Government, in reference to any particular branch of the law, to be able to state that the subject is under the consideration of a body of learned Commissioners, or that the Commissioners are preparing a report, or that the report of the Commissioners is about to be laid on the table, as the fact

may be. Let it not be forgotten, however, that it is to the Law Officers of the Crown, and especially to the individual placed at the head of the legal department, the Legislature and the Public must look, for the measures necessary and expedient for securing the efficient and satisfactory administration of the laws, and not to irresponsible and unpaid Commissioners. The latter may suggest and recommend, but it is the function of the executive government to give force and practical effect to the suggestions and recommendations of the Commissioners.

Nothing has yet occurred creative of any doubt that Lord Cranworth is fully sensible of the responsibilities of his elevated position; and as his lordship, from a fortunate combination of circumstances, is in the enjoyment of more abundant leisure than any of his immediate predecessors, it may be fairly expected that he is applying all the energies of his remarkably accurate mind to the consideration of the various measures of legal improvement which it will devolve upon him to announce and explain upon the re-assembling of Parliament.

The Lord Chancellor, it seems, is not content with the fate of the Bill for the Registration of Assurances, which certainly did not originate with him, but which he adopted with as little reserve as if he had been its sole parent. His lordship's Bill, it will be remembered, after passing through its various stages in the House of Lords, was transmitted to the House of Commons about the middle of the month of June last, and then referred to a select Committee, a majority of the members of which were, as usual with regard to government bills, supporters of the present administration. The Select Committee, after deliberating upon and settling the course of proceeding, examined the following witnesses:—Mr.

William Strickland Cookson, Mr. Edwin Wilkins Field, Mr. William Williams, Mr. John Fawcett, Mr. G. Webster, Mr. Bullar, and Mr. Coulson. After hearing the evidence of these gentlemen, the Committee proceeded to consider the Bill, and agreed to an unanimous expression of opinion,¹ "that many of the serious objections urged in the petitions against the registration of all assurances relating to landed property are well founded and have been substantiated;" and, in conformity with this resolution, the Committee recommended the House *not to proceed* with the Bill for the Registration of Assurances, but suggested "the immediate appointment of a Commission for the purpose of further considering the subject of registration of title, with reference to facilitating the sale and transfer of land, in order that a Bill for effecting that object may be brought into Parliament at the commencement of the next Session."

The suggestion of the Select Committee of the Commons, that a Commission should be *immediately* appointed, was not adopted, but the Lord Chancellor is now about to issue a Commission upon this subject, which it is proposed should be conducted upon principles altogether novel and, to some extent, speculative. The Commission is to be addressed to twelve persons, and it is not intended that they should meet together and discuss the subject upon which they are ultimately to report,—they are to be requested rather to refrain from intercommunication, and each member of the Commission is to be furnished with all available materials, which he is to hatch in private, and at the end of a limited period is expected to bring forth, in the shape of a report, the produce of his solitary incubation. By this method, it is supposed the Commissioners will be thrown upon their own resources, that individual invention and ingenuity will be taxed to the utmost, and that if the difficult problem is to be solved of how deeds are to be registered without increasing the expense or diminishing the security of the owner of land, it cannot fail to be hit off by some one of the twelve Commissioners who are expected to make this matter the subject of their cogitations.²

The new scheme for the Registration of Assurances, if any should be determined upon, can hardly be expected to be matured in the course of the approaching Session,

but it is understood that the Lord Chancellor will be prepared, at the commencement of the Session, to introduce a Bill abolishing the various Diocesan Courts of Probate throughout the kingdom, as well as the Prerogative Court of Canterbury, and establishing a great *Metropolitan Registry for Wills* both of real and personal estate. The details of this important measure are not yet probably definitively determined upon, but we have good reason to believe, that the Bill is not only framed, but approved, by the Government, and that it will be amongst the earliest and most prominent measures of Law Reform introduced in the Session of 1854.

The Commission announced in the last Number,³ for inquiring into the state of the Law and its administration in British India, was imperatively called for in consequence of the disclosures produced by the discussions which took place last Session upon the Bill relating to the Government of India. A large proportion of the members of the Commission have had the best opportunity of local acquaintance with the subject of investigation; but we should desire to see the whole system of judicial patronage in the Colonies thoroughly examined into and exposed, and should be agreeably disappointed if it turned out that the appointments to this branch of the public service were made with a due regard to the interests of the Colonies and the honour of the mother country.

PROJECTED JOINT-STOCK TRUST COMPANIES.

WE have briefly to call the attention of the Profession to the notices which have been given in the *London Gazette* and the newspapers, of projected Joint-Stock Companies for the execution of private trusts. Amongst these the South Sea Company again stands conspicuous, though not alone, as it did in the last Session of Parliament.

The objections to these projects are manifold, both in principle and detail. We adverted in our last volume to many evils and inconveniences which would arise from private trusts being managed by a numerous board of directors. A Master in Chancery, or a single Judge, or a small number of trustees, are able to enter into all the details of the management of an estate,—to give a careful consideration to the proper educa-

¹ See Report, Leg. Obs., vol. 46, p. 331.

² We understand that an eminent solicitor will be one of the Commissioners.

³ See *ante*, p. 39.

tion of infants, the control of their future property, their advancement in society, their travelling abroad, their marriage, and the care of their interests throughout their lives. Are all these domestic, family, and private concerns to be discussed and considered by a public board, composed of persons who know nothing of the personal feelings and interests of the parties? Then consider the disclosures which must come before the board in regard to the shares and interests which the *cestui que trusts* may have in banking and mercantile firms. Some of the members of rival establishments may be on the board, and thus become acquainted with matters which ought to be kept secret.

Considering the improvements which have been effected in the Court of Chancery, by which assets may be administered and trusts carried into effect with expedition and at moderate expense, these projects seem altogether uncalled for. At present the persons interested in trusts are represented by their respective solicitors, who zealously attend to their wishes, but if the affairs be placed in the hands of a public company, the solicitor of the company would naturally attend chiefly to the profit and advantage of his clients, the directors, and would feel little sympathy with the numerous *cestui que trusts*, whose interests would be, for the most part, confided to clerks and agents.

Again, these joint-stock companies are, of course, to be paid a per centage for executing and managing the trusts confided to them. Now, it may be asked, why should the law be altered in favour of such companies, and remain unaltered with regard to all other trustees, whether private individuals or solicitors, who can be allowed nothing for their trouble or loss of time? If the South Sea Company succeed in obtaining a repeal of the existing rule, the change should not be confined to joint-stock companies, but extended to all classes of trustees.

Such are a few of the suggestions which we at present offer, and we invite further communications on the subject.

LAW OF ATTORNEYS AND SOLICITORS.

AGREEMENT TO SHARE PROFITS WITH WRITER TO THE SIGNET. — CLIENT'S RIGHT.—VALIDITY.

A MR. GORDON had employed as his

professional agent in Scotland Mr. Fraser, a writer to the signet, and had afterwards sanctioned the retainer and employment of Mr. Poole as his solicitor in England, on the recommendation of Mr. Fraser. It appeared that a private arrangement had been entered into by Mr. Poole, to allow Mr. Fraser one-half of the profits arising from Mr. Gordon's business, and on the taxation of Mr. Poole's bills of costs, Mr. Gordon presented a petition, claiming to be entitled to have the bills taxed, having regard to such agreement, and to have such portion as Mr. Fraser was to receive under the agreement disallowed, together with all charges for attendances, conferences, and correspondence between Mr. Poole and Mr. Fraser.

The *Master of the Rolls* said, "The case is to be considered in two ways: either the agreement between Fraser and Poole was legal, or it was illegal. If it were legal, no question can arise upon the subject, because Mr. Fraser did not contract on behalf of his principal, but on behalf of himself, and Mr. Gordon cannot be entitled to the benefit of a legal contract to which he is not a party; if it be illegal, the argument that Mr. Gordon was defrauded cannot be maintained, because Mr. Poole could charge no more than he would be legally entitled to, if he had entered into no agreement with Fraser. The plaintiff will pay to Poole only that which he would be bound to pay him if there had been no agreement between Fraser and Poole. It is contended, that the clause in the Statute of Geo. 2¹ renders the contract illegal. It is what is called a hotchpot Act, relating to many other subjects; but the recital is this:— 'Whereas divers persons, not admitted as attorneys, do, in conjunction with, or by the contrivance of, certain attorneys, act as attorneys,' and it then proceeds to enact—that if any attorney shall act as the agent for an unqualified person, &c., such attorney shall be struck off the Rolls, and be liable to be committed.

"Now, this is a highly penal clause, and must be construed strictly. It means, that if a solicitor shall, by any contrivance, allow one not duly qualified to act as a solicitor, he shall be subject to be struck off the Rolls and imprisoned.

"Here, if Poole had lent his name to Fraser, and had allowed him to act as a solicitor in London, he would be liable to the penalties prescribed by this clause;

but there is nothing in the Act saying, that an attorney, acting as such, and being responsible to his clients for the conduct of his business, and liable for any misconduct, may not give a charge on the profits, or even a proportion of the profits, to another person.

"I am far from saying that the contract between Mr. Poole and Mr. Fraser was legal; but assuming that this was an illegal contract, and came within the Act, what would be the penalty? Is the client to get the benefit of it as against the solicitor, and be relieved from paying his bill of costs? No; the penalty is, that the solicitor is to be struck off the Rolls, and not that he shall lose the profits of his professional labour.

"Upon what principle or authority is it assumed, that this case is obnoxious to this clause, and that the client is to have the benefit of it? The cases of *Sumner v. Ridgway*, 1 Russ. & M. 748, and *Coates v. Hawkyard*, ib. 746, do not apply. In order to compel a solicitor to take out his certificate, he cannot recover his costs if he act without one; and here, if Mr. Poole had neglected to take out his certificate, he could not recover from Mr. Gordon more than costs out of pocket.

"There are two grounds on which the contract might be considered illegal:—1st, under the Statute of the 22 Geo. 2, c. 46; or, 2ndly, upon the general policy of the law. In the first case, Mr. Poole would be liable to be struck off the Rolls; and in the second, Mr. Fraser could not enforce the contract against Mr. Poole; but it would be a strange thing to hold, that Mr. Gordon (who is not a party to it) could obtain the benefit of a contract which he insists is illegal, and void as between the parties to it.

"I do not express any opinion whether such a contract could be supported; but I cannot fail to observe to what an extent the argument of the petitioner would go, suppose a solicitor, in embarrassed circumstances, agreed to pay a portion of the profits of his business to his creditors, if they allowed him to carry it on, and contracted not to commence legal proceedings against him, or make him bankrupt or insolvent; could it be reasonably urged, that the effect of such an agreement would be this—that the clients of the attorney would become entitled to deduct from their bills of costs that proportion of his profits which the solicitor had undertaken to pay to his various creditors? It would be a strange doctrine to say, that because the contract

between an attorney and his creditors was an illegal one, all the clients would be entitled to deduct from their bills of costs the proportion which he, by an invalid contract, had agreed to pay his creditors.

"I have no doubt that this petition cannot be supported, and that Mr. Gordon cannot get the benefit of the contract by any proceeding of this description: whether he could by any other mode, I do not say; but I certainly do not encourage any further attempt." *Gordon v. Dalzell*, 15 Beav. 351.

NOTICES OF NEW BOOKS.

A Treatise on the Law of Costs in Actions and other Proceedings in the Courts of Common Law at Westminster. By JOHN GRAY, Esq., Barrister-at-Law. London: Lumley. 1853. Pp. 611.

THIS is a very important and useful work. The costs of litigation, and the proportions and amounts to be paid by the several parties to an action, are often but little inferior to the subject-matter in dispute. It is 40 years, as observed by Mr. Gray, since the last edition of Mr. Baron Hullock's treatise on this subject, and although it is still cited in cases where the Law has remained unaltered, the changes during that long period of time have, for the most part, rendered it obsolete.

The Author thus states the necessity of a new work and the course he has adopted in its composition:—

"The first idea naturally occurring to any one undertaking to deal with the Law of Costs, would be the production of a new edition of Baron Hullock's Treatise; but from the commencement, it became evident that it was impossible to treat the subject in that manner. A very large portion of that work consists of cases, the reports of which are given at great length, and which cases are either no longer law, or no longer require such lengthened notice; and by far the greater portion of the materials for a work on Costs consists at present of cases, rules, and Statutes which were not in existence at the time the last edition of Baron Hullock's book was published. The intention, therefore, to publish an edition of that Treatise was very soon abandoned; the author thought that greater justice could be done to the subject by attempting an original work, and the present is the result. At the same time it is right to state that some parts of Mr. Baron Hullock's Treatise, which were thought to be available, have been transferred to this volume, and duly acknowledged; the extent of these, however, does not exceed a few pages.

"That the subject of Costs is one of suffi-

cient importance to justify a treatise, cannot be doubted. The right and liability to them are often of much greater importance to suitors than the claims in which they originate; nor must it be imagined that questions of costs are decided upon mere abstract arbitrary provisions without reference to general principles. Formerly, indeed, principles were in some degree lost sight of, and considerable confusion was caused by the conflicting and erroneous decisions which ensued; but the Courts of late years, assisted by the Legislature, have done much to restore order and congruity. An endeavour has been made to give this work a character for something more than a repository of Statutes and Cases, by keeping principles ever in view, and while placing the foundation of the decisions of the Courts in an intelligible light, pointing out unreservedly where those principles appear to have been departed from.

"The work was commenced many years ago, and progressed from time to time; but the author chose to delay its completion until the changes which were in progress in the Law of Costs should appear to have terminated. He thought this was the case when the Common Law Procedure Act passed; he then sent it to press, and about one-third of it was printed before the Rules of Hilary Term, 1853, were promulgated. Those Rules, however, affected various portions of the text; and although it might have been possible, by means of corrigenda and otherwise, to make what had been printed available, it was thought better to sacrifice what had been done, and commence anew with the proper corrections in the text; and accordingly that course was adopted, and the book is now presented to the Profession as containing the law on the subject as it exists at the present time."

At the first view, it might be presumed that a treatise on costs could be comprised in small compass, and that, not only its general principles, but most of its details, might be arranged under a few comprehensive heads. The present work, however, is divided into no less than 65 chapters, and their contents will show the variety and extent of the rules laid down, as well by the Legislature as by the orders and decisions of the Superior Courts. The work treats of—

1. The costs of an action in general.
2. Of the costs of issues.
3. Of the general costs of a cause.
4. Of costs of divisible issues.
5. Of the costs of evidence applicable to issues found against a party, as well as to issues found for him.
6. Of costs where there are issues of law.
7. Of costs where there are several defendants.
8. Of the limitation of costs by particular Statutes.
- 9 to 12. Of the limitation of costs.
13. Double and treble costs as between attorney and client.
14. Of enforcing the Statutes taking away or giving costs, by entering a suggestion.
- 15 to 18. Costs in particular actions.
19. Costs of feigned issues.
- 20, 21. Costs in actions where parties sue or are sued in a particular character.
22. Costs in actions against justices of the peace and other parties for acts done in a judicial or ministerial capacity.
23. Actions where the plaintiff sues in *forma pauperis*.
24. Costs where the action is terminated wholly or in part before verdict, by the act or default of the plaintiff.
25. Costs where the action is terminated by neglect of the plaintiff to try, after notice from the defendant under the "Common Law Procedure Act, 1852."
26. Costs where the suit is terminated either wholly or in part before verdict, by the default of the defendant.
27. Costs where the suit is terminated before verdict by death, or by consent of both parties.
28. Costs upon payment of money into Court.
29. Of costs upon the payment of money into Court after a tender, or after a summons to stay proceedings on payment of debt and costs.
30. Costs of new assignment.
31. Costs on pleas in abatement.
32. Security for costs.
33. Staying proceedings until payment of costs.
34. Staying proceedings on payment of the debt and costs.
35. Staying proceedings on the consolidation of actions and where the debt has been paid by third parties.
36. Costs of amendments in the process or pleadings in actions.
37. Costs upon the arrest of a defendant.
38. Incidental costs relating to evidence, not governed by the verdict.
39. Costs of special juries and of views.
40. Costs of the day.
41. Costs where the cause is made a remanet.
42. Costs where a new trial is granted.
43. Costs where a trial *de novo* is awarded.
44. Costs upon a repleader.
45. Costs where the judgment is arrested.
46. Costs upon judgment *non obstante veredicto*.
47. Costs of proceedings in error.
48. Costs upon proceedings by *scire facias* and *revivor*.
49. Costs upon special verdicts, special cases, and questions stated under the powers of the Common Law Procedure Act, 1852.
50. Costs on awards.
51. Costs of proceedings by *mandamus*.
52. Costs in prohibition.
53. Costs upon *quo warranto* informations.
54. Costs on indictments removed by *certiorari*.

55. Costs on orders of justices and other proceedings removed by *certiorari*.
56. Costs on criminal informations.
57. Costs of inquisitions under the Tithe Acts.
58. Costs of cases sent from other Courts for the opinion of the Judges of the Superior Courts.
59. Costs of rules and motions generally.
60. Of the taxation of costs.
61. Of setting-off and deducting costs of issues.
62. Of set-off in cross actions and deduction of interlocutory costs.
63. Of the mode of recovering costs in general.
64. Actions by attorneys and solicitors to recover costs.
65. Of actions to recover costs as damages.

Mr. Gray has rendered much service to the Profession by his complete and comprehensive analysis of all the Statutes, Rules, and Decisions on the subject of Costs, and by the clear and skilful arrangement of them under the several chapters and sections, divisions and subdivisions, which constitute his work. The Appendix comprises the General Rules of last Hilary Term;—The Table of Fees of the Court and Offices (which we hope will be speedily reduced);—the Sheriff's Fees;—the Costs of specially indorsed Writs;—and the expenses of a view. A copious Index affords ready reference to the contents of the volume.

RECEIPTS ON BONDS, POLICIES, &c.

THE Stamp Act, 16 & 17 Vict. c. 59, in the Schedule, requires that a "*receipt or discharge* given for or upon the payment of money amounting to 2*l*. or upwards" shall be 1*d*.

A question has arisen, whether this enactment applies to money paid in discharge of a bond or policy of assurance,—the discharge of which was hitherto written on the bond or policy, without stamp.

So of mortgages when paid off, which were effectually discharged by an indorsement signed by the proper party, acknowledging the receipt of the money.

The words, it will be observed, are very comprehensive: "*receipt given on the payment of money.*" Now, supposing it became necessary to put in evidence a bond, or policy, or mortgage, with a receipt indorsed, but having no penny stamp, could it be received? Let it be recollected, that the stamp cannot be affixed subsequently, on payment of any penalty whatever, as in other insufficiently stamped instruments.

But then the second section of the same Act, 16 & 17 Vict. c. 59, provides that all the allowances and *exemptions*, &c., contained in any Acts of the same kind, and in force at the passing of this Act, shall be in full force with respect to the duties by this Act granted, &c., so far as the same shall be applicable and not hereby expressly provided for, and so far as the same shall *not be superseded* by, and shall be consistent with, the *express* provisions of this Act.

The Schedule to the present Act also contains certain exemptions as to money in the hands of bankers, &c., but does not mention the receipts heretofore given without stamp on bonds, policies, &c. The large *ad valorem* or other stamps on those instruments appear to have been deemed sufficient to cover the ordinary receipt stamps, and now that the receipt stamp is reduced to a penny, it may be presumed the Legislature did not contemplate the extension of the new stamp to those instruments. The exemptions referred to in former Statutes seem, therefore, to be continued by the operation of the 2nd section.

We shall be glad, however, to hear that the doubt, if any, has been set at rest by the Stamp Office authorities.

INCORPORATED LAW SOCIETY.

INTRODUCTORY LECTURE OF M. ARCHER SHEE, ESQ., ON EQUITY.

MR. ARCHER SHEE commenced his Course of Lectures on Equity in the Hall of the Incorporated Law Society, on Monday the 7th November. The learned gentleman said, that—

The Science of Equity as understood and applied by the various branches of that jurisdiction which constitutes her Majesty's High Court of Chancery in England,—including in its range the judicial functions of the House of Lords in its strictly appellate character,—comprised so wide a field of practical inquiry, as to supply in itself an impressive warning against the indulgence of antiquarian research or philosophical speculation, in the attempt to develop and elucidate its principles and practice. In offering, therefore, some preliminary observations of a general nature, on this most important branch of our national jurisprudence, he should endeavour to compress within very narrow limits the few remarks which he deemed it material to make, in reference to what might be called the historical portion of his subject.

The origin of this peculiar and somewhat anomalous jurisdiction was, however, too closely connected with the great principle of which it was, in its highest attributes the su-

thoritative and practical exponent, to admit of his leaving wholly unnoticed a few leading points of legal and constitutional history, which would tend to explain the process of its introduction and development.

Met at the outset by the singular fact,—not unfrequently the subject of civil and sarcasm on the part of non-professional censors,—whose name indeed was Legion,—that the separation, or distinction between Law and Equity was a peculiar and exceptional characteristic of English jurisprudence,—they were naturally led to the consideration of the causes which had produced this apparent, and, to some over-precise theorists, distressing anomaly.

Those causes might, indeed, in themselves, be matters of little moment, as bearing on the details of Equitable Science;—for the immutable principles of truth, integrity, and fair dealing between man and man, were ascertainable on grounds of reasoning, far remote from any question of Anglo-Norman learning, or Anglo-Saxon nationality. But when, in the existence of that strong feeling against foreign innovation which gave rise to the emphatic protest: "*Nolumus leges Angliæ mutari*," we traced the main reason why the ordinary tribunals of the country had declined to mould their proceedings in conformity to the more advanced system of jurisprudence developed in the formularies of the Civil and Canon Law,—we had no difficulty in understanding how those who were qualified by a higher intellectual training, to estimate the gradually extending requirements of society, had eagerly sought to supply, by indirect means, those deficiencies in the administration of justice, which the ignorance of a rude and unlettered aristocracy, in whom the legislative functions were chiefly vested, and the jealous distrust of an alien philosophy, common to almost all classes, conspired to perpetuate.

It was hardly necessary to observe, that in the earlier period of the Norman dominion in England, and, indeed, during many succeeding generations, the Clergy were the chief, if not the sole depositaries of such learning as the age could boast, in a region where the faint reverberation of that impulse which the gradual revival of letters in Western Europe had begun to communicate to the human mind, was but partially and indistinctly felt. The duties of their sacred calling, no less than the early training of a strict and precise scholastic discipline, could not fail, in the case of those among the clergy who were gifted with a more than average amount of reflective intelligence, to direct their thoughts into a channel whose natural course led towards the study of those moral and social obligations, on the right estimate of which the true principles of legal science must ever depend. It required but a scanty acquaintance with the writings of the early canonists and civilians,—to discover through the puzzling medium of a somewhat crabbed latinity,—the clear and bright substance of that ethical wisdom, which, dimly and fitfully shadowed forth in the pages of heathen philosophy could be

fully discerned by the light of Christian truth alone. However distorted, in a barbarous age, may have been their application of those eternal maxims of right and justice, to which, as the wisest in their generation, they yielded a willing theoretic assent,—however occasionally warped or defaced their standard of moral perfection, by the influence of local prejudice, sacerdotal pride, or misguided zeal in the cause of their ministry or order,—it could hardly be denied that the clergy were the first in England, as elsewhere, to recognise and assert those higher duties affecting the mutual relations of men, to which direct legislation gave but an imperfect sanction, and social abuse even more fatally denied their natural development.

Whatever might have been the line of policy adopted by the Church, in the various struggles connected with questions of political liberty or power,—contests in which, where their own privileges were unassailed, we should generally find them ranged on the side of prerogative,—the services which they had rendered to the cause of civil freedom,—of social and legal equality, could never be forgotten by those who valued the birth-right of an Englishman, and indulged an honest national pride in the early emancipation of the humbler classes of this country from territorial servitude, and the grinding exactions of feudal power. And if we might fairly attribute, in great measure, to their influence, the transformation of the serfs "*adscripti glebe*," into the "bold peasantry, their country's pride," it was no less certain that to the manner in which, as Chancellors, they had availed themselves of the authority vested in them by the custody of the Great Seal,—and the delegation of an ill-defined and consequently elastic Royal Prerogative, to enforce, between man and man, those maxims of conscientious right which the Common Law wholly ignored or disregarded, we owe the origin and gradual development of our system of Equity.

It was not his purpose to detain them from the consideration of the more practical details of the subject, by endeavouring to trace the historical progress and gradual expansion of this important judicial authority. But two observations suggested themselves in connexion with its origin and growth, which were of some interest in a constitutional as well as a legal point of view. Had the power of the Crown, in those early times, been restricted in practice within the limits by which it might be said to have been, even then, in some sense, theoretically circumscribed,—this salutary modification of the unbending and technical rigour of the Common Law, could not have been quietly effected by the sole force of Prerogative, evading or expanding the rules of ordinary jurisdiction, in favour of moral right and conscientious duty. The wisdom of the most enlightened clerical Chancellor, clothed with all the authority of the Sovereign, of whose conscience he was supposed to be the depositary and guardian, could have supplied no remedy against the stern operation of laws

from the literal and unvarying purport of which the administrative function had no power to deviate, and the legislative spirit as little inclination to recede. Thus what was in its origin an irregularity, had worked most favourably—he might almost say providentially, for the interests of justice; and, in the course of ages, while the extent and force of the prerogative had been gradually diminished in practice, and, at length, clearly defined in theory,—the judicial authority which owed its rise to an exaggerated estimate of that prerogative,—so far from suffering by the diminution of the power which had called it into existence,—had experienced a gradual and steady development,—acquiring, at length, that prescriptive consistence and solidity which constitute it at this day the most august, comprehensive, and formidable jurisdiction to which the citizens of a free state ever yielded a constitutional and unhesitating obedience. On the other hand, the somewhat anomalous character of the jurisdiction, as evading and controlling, on discretionary grounds, the operation of the written or Common Law, had acted beneficially on the interests of equitable science amongst us,—by chiefly restricting the attention of those who had been entrusted with the administration of this branch of our legal system, to the principles of moral right and wrong, with a view of more completely working out the theory of substantial justice, unfettered by the rules of a too stringent technicality. Without meaning, for a moment, to disparage the merits of those who, in other countries, have applied, and successfully applied, their talents to the compilation of a Code embodying in its provisions, and professing to give combined effect to the two principles of technical and conscientious jurisprudence, he might be permitted to observe that a cursory examination of that admirable monument of legal industry, the *Code Napoléon*, would easily convince the student that the complete and effective amalgamation of these two principles in the administration of justice was a problem of which they had yet to seek the solution. And those who had an opportunity of observing the practical working of the French judicial system, administered, as it was, on the basis of that justly celebrated code, would hesitate before they decided that the balance of substantial, or even of speedy justice, in matters of equitable cognisance, was in favour of the united jurisdiction as exemplified in the procedure of our neighbours. He might venture to assert, that the gradual elaboration of our system, through the various phases of its rise and progress,—strengthened as it had been by traditional notions of Royal Prerogative, tested by a more searching and exclusive attention to the main principle it represented, and enriched by the accumulated judicial wisdom of centuries,—had conferred on our equitable tribunals a wide range of action in the enforcement of moral right, and a vigorous promptitude in the repression of irreparable wrong, for which we should in vain seek in the more scientific, per-

haps; but less practical and energetic theories of justice embodied in Continental codes. The nature and extent of the authority of the Court, in reference to the two subjects of "*Specific Performance*," and "*Injunction*," would, perhaps, afford a sufficient illustration of his meaning on this point.

He did not, however, forget that the object for which they were there assembled was not the discussion of the comparative merits of our system of Equity, but the practical explanation of its theory and functions; and if he did not offer an apology for an apparent digression, it was that the facts at which he had thus slightly glanced, had a legitimate bearing on the principle to which all equitable science must be referred, and tended to show that its most emphatic and effective recognition was the main and ever conspicuous characteristic of the jurisdiction whose nature and duties they were about to consider.

Equity, as a term of British jurisprudence, and in its most extensive signification, could hardly dispense with a twofold definition. In one sense, indeed, and in the broadest general sense, it might be accurately defined as substantial and conscientious justice, distinguished from the result of merely positive law, in which sense it was well described by Grotius as *correctrix ejus in quo lex propter universalitatem deficit*.

That principle, no doubt, pervaded its whole operation; but it had also a more technical and restricted meaning, as implying the administration of justice according to certain definite rights between party and party, ascertained in reference to rules not less stringent than those recognised and enforced by the Common Law, but of which that law took no cognisance, and which, in some particulars, were even directly opposed to its theory.

It was not merely the great redressor of injustice,—the vindicator of moral right against every ingenious variety of actual fraud which could elude the penalties of law,—supplying, by the interposition of its extraordinary power, the administrative deficiencies of mere legal procedure, where justice required that aid,—and intervening with equal decision and effect to arrest the ordinary course of Law, where its operation would be against right and conscience. Apart from those more obvious functions, although by no means independently of them, Equity had raised up a separate structure or system of law, worked by its own machinery, and governed by its own rules, which in process of time had assumed as distinctly authoritative a shape as the maxims of Common Law, or the express enactments of the Legislature. The administration of trusts, in all the endless variety into which the wants and interests of a highly commercial society have moulded and fashioned them, might be said to constitute in itself a distinct branch of jurisprudence,—were not its origin and, in many respects its working details, so closely connected with the broader general principle which was the distinctive boast of Equity. The infinite diversity

of subjects and detail to which its operation extended would naturally secure for it a very large share of their attention as they proceeded in the investigation of the principles and practice of Equity. In the preliminary and cursory view of his subject which he had proposed to himself in that evening's discourse, chronological propriety and philosophical accuracy alike suggested that he should first deal with the more general and less technical characteristics of the science.

The intervention of Equity, in relieving against fraud perpetrated under the sanction and by means of the machinery of legal forms, constituted a part of its functions of which the *rationale* could not but be easily apprehended, and the moral necessity admitted without hesitation. It was a jurisdiction of such obvious expediency, on the clearest principles of simple justice, that it seemed almost superfluous to explain its action by the ordinary method of illustrative example. Still, as a recurrence to first principles, however familiar they might be to the reasoning mind, could never obstruct, and might often facilitate, its progress towards logical or philosophical truth, it might be as well to proceed step by step in the process of illustration,—submitting, if necessary, to the reproach of being trivially or tediously explanatory, for the sake of avoiding the more serious risk of being imperfectly understood.

Positive law, it was evident, must be founded on general rules, which, however judiciously framed, would often exhibit an unsatisfactory result in their application to individual cases.

The law which conferred on a man the absolute control over any species of property, necessarily implied that he was morally and intellectually a free agent in dealing with the interest so vested in him. His fitness to be trusted with that control, implying such free agency,—and apart from the question of absolute mental incapacity, which, in all systems, must necessarily form a ground of personal disqualification,—could be ascertainable only by reference to a general standard of age; and the law, accordingly, in this country, as in all other civilised countries, fixed the earliest period of his life at which a man should be at liberty to exercise the rights of ownership over that which was defined to be his property. Whether he would act wisely or foolishly in dealing with those rights, was a question with which the law could have no concern. Within the limits of law, and to the extent to which it recognised the subject-matter of property as a thing transmissible from one person to another, *ad arbitrium possidentis*, and so as to effect a total or partial change of ownership, the will of the owner,—being a person *compos mentis* and *ex jure*, must be unfettered.

The secure possession of property, however,—a necessary condition of civil life in all rational communities, and one on which the existence of that absolute power of disposition of which he had been speaking, was necessarily contingent, must often depend on certain formal and documentary evidences of ownership;

especially where the title and consequent possession were derived from recent, or comparatively recent dealings between man and man. Accordingly, it was the province of positive law to prescribe the ceremonies which were to give full legal effect to transactions, having for their object the arbitrary transmission of property from one owner to another. Thus, the formalities necessary for the due execution of deeds *inter vivos*, and those which were requisite to give validity to testamentary dispositions, were clearly defined by law:—and the document fulfilling these technical requisitions,—*secundum subjectam materiam*,—if executed by the party having the necessary legal dominion over that subject matter, was, of course, *prima facie*, unimpeachable.

It was obvious, however, that there were a variety of possible circumstances, under which a great practical injustice might be the result of allowing its technical effect to a legal document, executed with all due formalities. Ignorance or misapprehension on the part of a vendor or donor, as to the extent or importance of the interests with which he is purporting to deal,—fraudulent misrepresentations made to him as to the value of the supposed equivalent for which he has stipulated,—undue influence, arising from peculiar social, or confidential relations,—brought to bear on his fears or his feelings,—these and many other circumstances affecting the relative position of the contracting parties, might each in its degree, and according to its bearing on the facts of the case, afford the strongest moral grounds for setting aside a transaction entered into on both sides, with every external evidence of freedom and deliberation.

But clear, and, indeed, self-evident as was this proposition in theory, when they attempted to define the exact limits which, in practice, must be held to separate material from unimportant error as to fact,—trivial exaggeration from designing falsehood,—and the legitimate bias of gratitude or affection, from the despotic control which plausible knavery could so often exert over moral weakness or irresolution,—they soon perceived the enormous difficulty of laying down any general rule which should, in terms, be applicable on all occasions where the validity of a document was challenged on any one of the grounds to which he had above adverted; and it was at once admitted that the true solution of each individual case must depend on the close application to its peculiar circumstances of nicer and more exact principles of judicial morality than could well be embodied in a clause of the most skillfully framed Act of Parliament, or an article of the most carefully digested code. That nice adjustment of the scales of moral justice, when the balance would be injuriously affected by the weight of mere legal forms, was the peculiar province of Equity as administered in our Courts. How far the distinctions which suggested themselves between the judicial requirements of the two systems might affect the question of the expediency or in expediency of

keeping separate the jurisdictions of Law and Equity, he did not stop to inquire. But it was impossible to impress too strongly on the mind of the student, who would master the details of the latter science, the necessity of reflective consideration in working out its true principles,—and close ethical as well as logical reasoning in their practical application.

[The remaining part of this Lecture will be given in the next Number.]

ANNUAL REGISTRATION OF ATTORNEYS.

LAST DAY FOR REGISTRAR'S CERTIFICATE.

OUR readers are aware that the 16th inst. is the last day for paying the Stamp Duty on the Annual Certificates of Attorneys, but in order to pay this tax to the Inland Revenue, they must first obtain the certificate of the Registrar of Attorneys, at the Hall of the Incorporated Law Society, in Chancery Lane.

The Act of Parliament allows the Registrar six days after having received the usual declaration, signed by the attorney himself, or his partner, or (in the case of country attorneys) the London agent. In strictness, the declarations should be lodged on Saturday, the 10th inst., but we understand that the preparations which have been already made will enable the Registrar to complete the certificates, if the declarations are lodged on Monday the 12th.

EDUCATION OF ATTORNEYS.

To the Editor of the Legal Observer.

SIR,—Your article of last week prompts me to observe upon this subject, with reference to the suggestion that the Examination should be extended beyond legal subjects—

That a knowledge of Latin and French, as suggested by you, is desirable is admitted, but that it should be made a "*sine qua non*" to admission may be disputed; but, above all, the addition of literature and science, as urged by your correspondent, invites objection.

If it was not deemed essential when a reason existed for insisting on a knowledge of Latin and French (the use of them in legal proceedings), to subject the Candidate for admission to an examination thereon — "*à fortiori*," no impediment should be offered on that score now that the reason has ceased.

Independently of the modern desire of the Legislature and the Public to get rid of technicalities, there is a stronger argument against a classical examination, which is, that it would invite a sacrifice of time at the expense of those hours necessary to be devoted to legal studies.

Upon the subjects of literature and science,

it is doubtful whether the lawyer does best with or without such attainments; but it surely cannot be denied that the more devoted a man is to one subject the better he will become acquainted with it, and that the Law is sufficient in itself to occupy him fully.

Instead of literature and science, the Public look to a professional man for habits of business and a knowledge of the world, in addition to his legal acumen. If the others be required, different sources will yield them, and to make the choice of a profession dependent on matters foreign to it, appears not only unjust, but absurd.

The present system has hitherto worked well, and it may be advisable for the Profession to let well alone. J. E.

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

THE Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain, by virtue of an Act passed in the Session of Parliament holden in the 16th & 17th years of the reign of her present Majesty, intituled "An Act relating to the appointment of Persons to administer Oaths in Chancery, and to Affidavits made for purposes connected with Registration," and of all other powers enabling him in that behalf, has been pleased to appoint the following practising Solicitors, whose place of business is within 10 miles from Lincoln's Inn Hall, to be London Commissioners to administer Oaths in Chancery, so long as they shall continue to practise as Solicitors within such 10 miles as aforesaid:—

George Herbert Kinderley, 6, New Square, Lincoln's Inn (*President of the Incorporated Law Society, U. K.*)

John James Joseph Sudlow, 38, Bedford Row (*Vice-President*).

Benjamin Austen, 4, Raymond Buildings, Gray's Inn.

Edward Savage Bailey, 5, Berners Street, Oxford Street.

Keith Barnes, 7, Spring Gardens, Westminster.

Thomas Clarke, Ordnance Office, Pall Mall.

William Strickland Cookson, 6, New Square, Lincoln's Inn.

John Coverdale, 4, Bedford Row.

William Loxham Farrer, 66, Lincoln's Inn Fields.

John Swarbrick Gregory, 1, Bedford Row.

Richard Harrison, 2, Gray's Inn Square.

Bryan Holme, 10, New Inn.

Henry Lake, 10, New Square, Lincoln's Inn.

Germain Lavie, 8, Frederick's Place, Old Jewry.

Edward Lawford, Drapers' Hall, Throgmorton Street.

James Leman, 51, Lincoln's Inn Fields.
Joseph Maynard, 57, Coleman Street, City.
William Henry Palmer, 24, Bedford Row.
Edward Rowland Pickering, 4, Stone Buildings, Lincoln's Inn.

William Sharpe, 41, Bedford Row.
William Tooke, 39, Bedford Row.
William Williams, 32, Lincoln's Inn Fields.
John Young, 6, Sise Lane, Bucklersbury
(*Members of the Council*).

Robert Maugham, Law Society's Hall, Chancery Lane (*Secretary*).

Dated the 6th day of December, 1853.

ROBERT MAUGHAM,
Registrar of Solicitors.

BARRISTERS CALLED.

Michaelmas Term, 1853.

LINCOLN'S INN.

November 17.

Walker Skirrow, Esq., B.A.
Charles Spencer Perceval, Esq., LL.B.
Horace Brooke, Esq., M.A.
Twynihoe William Erie, Esq., M.A.
Edward Foster Neale, Esq., B.C.L.
Frederick William Bosworth, Esq., M.A.
William Parker Hamond, Esq., M.A.
Charles Harcourt Chambers, Esq., M.A.
George Russell, Esq., M.A.
Theophilus Ashton, Esq., M.A.
John William Hornaby, Esq.
Thomas Joseph Bradshaw, Esq., M.A.
John Singleton Winder, Esq., B.A.

INNER TEMPLE.

November 17.

Arthur Milman, Esq.
Thomas Humber, Esq., M.A.
Frederick Meadows White, Esq., B.A.
Edward Bridger Lomer, Esq., B.A.
Henry Walker Bent, Esq., B.A.
Edward Twopeny, Esq.
James Smith, Esq., B.A.
George Meek, Esq., M.A.
Henry Holden, Esq., B.A.
Henry Alison, Esq., B.A.
Stamford Hutton, Esq.
Henry Morgan Vane, Esq.
Samuel Haywood Blackmore, Esq.
George Charles Degen Lewis, Esq.

MIDDLE TEMPLE.

November 17.

George Bilsborrow Hughes, Esq., M.A.
Edward Irvine Howard, Esq., M.A.
John Marriott, Esq., B.A.
Henry James Slack, Esq.
John Stuart Glennie, Esq.
Charles Edward Coleridge, Esq., B.A.
James Charles Whitehorne, Esq., B.A.
Bridges Carmichael Hooke, Esq., B.A.
Butler Cole Aspinall, Esq.

Alfred Gutierrez Henriques, Esq.
Thomas Brooke, Esq.
Frederic Merrifield, Esq.
John Aubrey Jephson Norreys, Esq., B.A.

THE FUSION OF LAW AND EQUITY.

To the Editor of the Legal Observer.

MR. EDITOR,—It may be a very convenient way for "Numa" to beg the question as to the inexpediency of the fusion of Law and Equity by attempting to pull the quotations of an inexperienced advocate to pieces. Would it not, however, have been more generous for "Numa" to have entered into the lists, than to stand at a distance amusing himself throwing stones?

Is it not a fact that some proceedings in Chancery are commenced by a summons, and whether all proceedings at Law and in Equity might not be judiciously, beneficially, and more economically commenced by issuing a summons in the first instance? Whether, instead of having the separate offices of Common Pleas Writ Office, Queen's Bench Writ Office, Exchequer Writ Office, and Record and Writ Clerks' Office, it would not be judicious, beneficial, and more economical to have only one office and one set of clerks, than the present system?¹ Whether it would not be judicious to have one system of stating the dispute in all cases, of whatever kind the dispute might be, before attempting to go into evidence, than to jumble a mass of facts as to statement of dispute and evidence of dispute together, to the utter confusion of all laws of pleading and evidence? And whether it would not be more judicious, beneficial, and economical to tell the Judge who is to decide the dispute what the matter in difference is, before perplexing him with evidence of portions of the matter in difference, which he is obliged to add together before he can understand any part of it?

Let "Numa" answer these questions if he can.

ANTIDOTE.

SIR,—Your correspondent, who signs himself "Numa," and who, perhaps to signalize his acquaintance with the language of that legal sage, has favoured us with a Latin quotation, not less happy than it is *recondite*—(recondite alike for novelty of selection and obscurity of application)—asks for a definition of "positive *mechanical* Law."

The words used by Bentham are,—"*positive municipal law*;" and *that* phrase I will endeavour to interpret, without calling upon "Numa" to tell me, in return, what "Equity," in the Chancery vocabulary, really means.

"Positive municipal law," then, as I understand the expression, is a body of rules defining rights and obligations in respect of property, and prescribing the mode in which those

¹ Could not all the legal business of the country be done at the Police Office or the County Court!!

rights and obligations shall be asserted and enforced. If we admit any *alternative* to positive law, the necessary consequence is (and *has been*) the gradual formation of an antagonistic system of law concerned about the same subject-matter; for are not "Common Law" and "Equity Law" perpetually clashing with and contradicting each other, and too often, in the conflict of their discordant principles, effecting the ruin of the suitor?

A distinguished Scottish jurist, Mr. Bell, observes—"Law Dictionary," Art. "Equity,"—that "it is of much importance to avoid the adoption of what are called 'Principles of Equity,' which, however well fitted they may be for the consideration of a Legislature, generally do more harm than good when permitted to influence the determination of a Court of Justice. See Bl. 3, 566, where an exposure will be found of the errors into which Lord Kaimes has fallen."

It is impossible to read the "Commentaries" here referred to without feeling that their purport is *ironical*, and that the illustrious Author, notwithstanding his *vocation* to uphold "things as they were," barely palliates an anomaly which he does not profess to admire.

It is, however, some consolation to reflect, that America has set an example which must force imitation, and that the reign of Common Sense is at hand. The object will now be, not to multiply Law suits, but to simplify Law, and, as a necessary consequence, the "beautiful disorder," incidental to "Law or Equity," will no longer form a part of the system of *Justice*. "Equity," and her attendant phantoms are only awaiting their dismissal to the realm of shadows, their proper abode. If "Numa" is of the party, he may at least comfort himself with the plaintive exclamation—

"Tu vallem *egria* descendimus!"

BRUMA.

[We have been compelled to omit some further examples of our learned Correspondent's erudition and sarcasm, but have preserved, we trust, all such parts of his letter as bear on the question of the "Fusion of Law and Equity,"—which we wish to be argued practically and concisely, in order to secure the attention of our readers.—ED.]

STAMPED AFFIDAVITS AT THE BANK.

To the Editor of the Legal Observer.

SIR,—The practice at the Bank of England of requiring *stamped affidavits* upon certain occasions where it is requisite to remove some impediment to the transfer of stock, is well known. The case of a person dying possessed of trust stock standing in his name alone, or in a joint account wherein he is the survivor, the

value of which stock is not covered by the stamp on his probate or letters of administration, is probably that with which the Public is most conversant. I have always entertained an opinion that this practice is not only indefensible, but illegal: indefensible, so far as the stamp is concerned, because I imagine that such affidavits fall within an exemption in the Stamp Act, 55 Geo. 3, c. 184, under the head "Affidavit;" and illegal in consequence of the 14th section of the 5 & 6 Wm. 4, c. 62. I should be obliged to any of your correspondents who would state their views upon the subject; and to that end the insertion of this letter in your Journal will be esteemed a favour by
R. P.

MOOT POINTS.

LICENSE TO DEMISE.

YOUR correspondent "Amicus" rests his objections to "Licenses to Demise" on very slender grounds. I have seen a great many documents of that description, but never met with one dated *after* the habendum in the lease,—that is, to take effect from a period subsequent to the commencement of the tenancy. A careful solicitor will take care and see that his instructions to the steward are clear on that point, and I am led to suppose that the case put by "Amicus" is purely hypothetical, for the sake of hanging an objection upon. What does he say to the other licenses, —to fell timber and pull down buildings; these, I presume, are as equally obnoxious to "Amicus" as licenses to demise,—as they must, according to his notions, interfere with the owner having power to deal with his property as he may think fit. If the system is bad, abolish it altogether, but it will be unwise Legislation to "*tinker*" the Enfranchisement Act, by lopping off only a branch of one of the grievances, and leave others equally as distasteful remaining.

HOMAGE.

ANNUITY.—MARRIED WOMAN.

Can a married woman, in the receipt of an annuity, with the consent of her husband, assign her right to such annuity to a third party?

TACITUM.

HEIR NOT MENTIONED IN SCOTCH WILL.

In case a testator in Scotland, devising lands, houses, &c., in that country to several of his relatives, without mentioning his heir-at-law in his will,—can the heir-at-law, his nephew, who is residing in London, dispute the will in the Court of Chancery here?

S. H.

POSTHUMOUS HEIR-AT-LAW.

A., possessed of real property of large value, dies intestate and without male issue, leaving B., his widow, *exceista*. B., within a fortnight

afterwards, marries C., also possessed of valuable real estate, and, in a month after the second marriage, is confined of a male child, D.

Under these circumstances, is D., in law, to be considered the son and heir of A., the first husband; or the son of C., the second husband; and would his birth divest the estate from the person who would otherwise be A.'s heir-at-law.

AN INQUIRER.

NOTES OF THE WEEK.

RETIREMENT OF TWO MASTERS IN CHANCERY.

MR. SENIOR and Sir W. Horne, have been released by the Lord Chancellor, under the powers of the Masters in Chancery Abolition Act, and the causes remaining unfinished in their offices have been transferred to the five remaining Masters.

Master Senior was called to the Bar by the Society of Lincoln's Inn, 28th June, 1819, and attained great eminence as a conveyancing barrister. He was appointed a Master in Chancery on the 10th June, 1836.

Sir William Horne was called to the Bar by the Society of Lincoln's Inn, 23rd June, 1798, promoted to the rank of King's Counsel, Trinity Vacation, 1818; Attorney-General to the Queen, 1830; Solicitor-General to the

King, November, 1830, and Attorney-General, November, 1832. He accepted the office of Master in the year 1839. He ranks as a Benchet prior to Lord Brougham and Lord St. Leonards.

NEW SERJEANT-AT-LAW.

George Atkinson, Esq., of the Northern Circuit, was sworn in before the Lord Chancellor on the 5th instant, as Serjeant-at-Law. He was called to the Bar by the Society of the Inner Temple, 12th June, 1840. He gave rings with the motto, "*Tout temps prist.*" He is a native of Westmoreland, and the author of the following works:—"The Worthies of Westmoreland," "International Law," "Sheriff Law," "The Shipping Laws of the British Empire," &c. His promotion seems to give general satisfaction.

Mr. Frederick Morrell has been appointed Solicitor to the Oxford University, in the room of Mr. Baker Morrell, resigned.

NEW MEMBER OF PARLIAMENT.

Evelyn Philip Shirley, Esq., for the Southern Division of the County of Warwick, in the room of George Guy Greville (commonly called Lord Brooke), now Earl Brooke and Earl of Warwick, summoned to the House of Peers.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

In re Ashenhurst's Patent. Nov. 4, 1853.

PATENT LAW AMENDMENT ACT.—COSTS OCCASIONED BY OBJECTIONS AFTERWARDS WITHDRAWN.—PETITION TO SEAL.

On a petition to seal a patent and to extend the time for filing the specification, it appeared that objections had been filed under the 15 & 16 Vict. c. 83, but had been since withdrawn: Held, that the costs occasioned thereby, and of the petition, must be borne by the objector.

Darling appeared in support of this petition to seal letters patent for improvements in pianofortes, and to extend the time for filing the specification. It appeared that objections had been filed under the 15 & 16 Vict. c. 83, but that they had been afterwards withdrawn.

The Lord Chancellor, in making the order, directed the costs occasioned by the objections and of the petition to be paid by the objector.

Master of the Rolls.

Bartlett v. Horton. Nov. 3, 1853.

DISMISSAL OF BILL FOR WANT OF PROSE-

CUTION.—TAXATION OF COSTS.—MOTION TO STAY.—PRACTICE.

On a motion to dismiss, for want of prosecution, a bill filed in 1845, an order was made for the plaintiff to set it down for hearing, and sue out and serve a subpoena to hear judgment within a week, or that the cause should stand dismissed. The plaintiff's solicitor omitted to serve the subpoena within the time limited, in the belief it would be sufficient to do so 10 days before Michaelmas Term, under the 10th Order of 8 May, 1845, art. 46, and the defendant thereupon obtained a warrant to tax the costs. A motion to stay the taxation was refused, with costs.

Semble, also, the motion should have been to restore the bill.

THIS was a motion to stay the taxation of costs pursuant to a warrant obtained by the defendant under an order in this cause on July 14 last, on a motion to dismiss for want of prosecution, upon the plaintiff to set down the cause for hearing, and sue out and serve a subpoena to hear judgment on the defendant

within a week, or in default the bill should stand dismissed with costs. It appeared that the plaintiff's solicitor, although he had duly set down the cause for hearing, had omitted to serve the subpoena within the time limited, in the belief it would be sufficient to do so under Order 16 of 8 May, 1845, art. 46,¹ ten days before Michaelmas Term, whereupon a warrant to tax had been taken out. The bill was filed in 1845.

Roupell and Drewry in support of the motion; *R. Palmer, Ellis, and Cole*, contra.

The Master of the Rolls said, that no case had been made out for the indulgence of the Court, and besides the motion should have been to obtain leave to restore the bill. The motion would therefore be refused, with costs.

Lady Jervoise v. Jervoise and others. Dec. 5, 1853.

WILL.—CONSTRUCTION.—GIFT TO WIFE OF JEWELS FOR LIFE.—PARAPHERNALIA.—CLAIM.—COSTS.

A testator gave his jewels to his wife, the plaintiff, for life, and afterwards they were to be heir-looms. It appeared certain jewels had been presented to the plaintiff by her aunt, and the testator had also given her others in his lifetime: Held, that these were not included in the will, but were paraphernalia.

Held, also, that as the representatives of the plaintiff could not recover, she had properly filed her claim as to the construction of the will, and the costs were directed to be paid out of the estate.

This was a claim for the opinion of the Court on the construction of the will of the late Rev. Sir Samuel C. Jervoise, whereby he directed all his "jewels" should be held in trust for the use of his wife, the plaintiff, for life, and afterwards should be treated and go as heir-looms in his family. It appeared that the plaintiff was presented by her aunt with certain pearl ornaments, and had had them reset at her own expense, and that the testator had also given her a pair of diamond bracelets. The question was, whether these formed part of the plaintiff's paraphernalia, or were included in the will.

Glasse and T. H. Hall for the plaintiff; *Haynes* for the trustees.

The Master of the Rolls said, the plaintiff was entitled to retain the ornaments in question, as they clearly formed part of her paraphernalia; and that as it was necessary the plaintiff should make claim thereto during her lifetime, and her representatives could not have made it afterwards, the costs of all parties would come out of the estate.

¹ Which directs, that "a subpoena to hear judgment is not to be returnable at any time less than one month from the teste of the writ; and it is to be served at least 10 days before the return thereof."

Vice-Chancellor Kindersley.

Price v. Bury. Dec. 3, 1853.

EQUITABLE MORTGAGE OF COPYHOLDS.—FORECLOSURE.—COSTS OF SURRENDER.

Held, in a suit to foreclose, that the mortgagor was liable to pay the costs of a surrender to an equitable mortgagee of copyholds, by deposit of copies of Court rolls, &c.

In this suit to foreclose an equitable mortgage of certain copyhold property by deposit of copies of the Court rolls, &c., a question arose as to the payment of the costs of surrender to the mortgagee.

Glasse, De Geer, and W. W. Cooper for the several parties.

The Vice-Chancellor said, that the mortgagee would, in the case of freehold, have to tender to the mortgagor a conveyance for execution, the costs of which the mortgagee would have to bear, but that in case of copyholds, the mortgagor had to take the initiative and to surrender his estate to the lord, in order to pass the same to the mortgagee, and therefore the mortgagor would have to bear the costs of such surrender.

Vice-Chancellor Stuart.

Thomson v. Partridge. Nov. 25, 1853.

ENLARGING TIME FOR CLOSING EVIDENCE.

The time was enlarged for closing the evidence on the defendant's application, where the plaintiff, who had obtained previous enlargements, had not filed his affidavits until two days before the time expired.

Malins and Piggott appeared in support of this motion to enlarge the time for closing the evidence, on the ground the plaintiff had not filed his affidavits until Nov. 1 last, and that the defendant had been unable to obtain office copies until after Nov. 3, the period fixed for closing the evidence, under an order of enlargement obtained by the plaintiff.

Selwyn, contra.

The Vice-Chancellor said, that as the plaintiff had obtained the prescribed period of nine weeks after issue was joined for closing the evidence,¹ to be enlarged to nearly twice that time, it was only fair the defendant should should have a similar indulgence, and leave would therefore be granted to the defendant to file his affidavits until Dec. 10, and the evidence to close on the 21st Dec.

Esparte Lines. Dec. 5, 1853.

ARREARS OF DIVIDENDS ON FUND TRANSFERRED TO NATIONAL DEBT COMMISSIONERS.—PETITION FOR PAYMENT.

A petition for the payment of arrears of dividends due on stock transferred to the Commissioners for the Reduction of the

¹ Under the 32nd Order of 7th Aug. 1852.

National Debt, was directed to stand over in order to make inquiries.

G. M. Giffard appeared in support of this petition for payment of the arrears of dividends due on certain 3½ per cent. annuities, purchased by the petitioner, and transferred, in the name of Mr. William Frederick Cannon, of Kirtou, Hertfordshire, which was alleged to be a fictitious name, assumed in order to prevent the petitioner's wife from being aware of the transaction. It appeared the petitioner had received one dividend on part of the fund, which was purchased in two different sums, but had received nothing in respect of the other portion. The whole had been transferred to the Commissioners for the Reduction of the National Debt under the 56 Geo. 3, c. 60.

Wickens for the Commissioners, contra, on the ground further inquiry should be directed.

The Vice-Chancellor accordingly directed the petition to stand over for the purpose of instituting inquiries, whether there was any person of the name in question, and also as to the circumstances under which the one payment had been made.

Vice-Chancellor Wood.

Downing v. Picken. Nov. 6, 1853.

ADMINISTRATION SUIT.—DISTRIBUTION AMONG CREDITORS.—PAYMENT TO SOLICITOR.

An order was made for the insertion, in an order for distribution of a fund among creditors, of a direction for payment to the solicitor of the respective creditors, where the fund was under 10l., on the written consent of the creditors, verified by affidavit.

THIS was a motion in this administration suit for the insertion, in an order on further directions to apportion a fund in Court among creditors, of a direction that where the amount was less than 10l. it might be paid to the solicitors of the respective creditors.

Lewis appeared for the several parties, in support.

The Vice-Chancellor said, the order could not be made without the written consent of the several creditors, verified by affidavit.

Cole v. Burgess. Nov. 9, 1853.

CREDITOR'S SUIT.—STAYING ACTION AT LAW.—INJUNCTION.—COSTS.

Where an executor did not deny assets nor dispute the debt, an injunction was refused to restrain an action at law by a creditor, which was brought before the creditor's suit had been instituted, unless on payment of the costs at law and of the motion.

THIS was a motion on behalf of an executor, for an injunction to restrain an action at law, by a creditor, a decree having been obtained in this creditor's suit. It appeared the action had been brought before this suit was insti-

tuted, but no proceedings had been taken after notice of decree.

Glaspe in support.

Shapter, contra, citing *Bear v. Smith*, 5 De G. & S. 92.

The Vice-Chancellor said, that as the executor did not deny having assets nor dispute the debt, the motion could not be granted unless on payment of the costs at law and of the motion.

Lord Ricers v. Fox and others. Dec. 3, 1853.

WILL.—POWER TO ERECT OUTBUILDINGS.—ERECTION OF LABOURERS' COTTAGES.—MOTION FOR DECREE.

Under a will, the trustees were empowered to apply part of the proceeds of sales and exchanges in the erection of farm-houses and outbuildings: Held, on motion for a decree, that the trustees might build cottages for labourers which were absolutely indispensable to the cultivation of the farms.

THIS was a motion for a decree under the 15 & 16 Vict. c. 86, s. 15, in this suit, which was instituted for a declaration to apply part of the proceeds of certain sales and exchanges effected under the powers of the will of the late Lord Rivers, dated March, 1823, in building 26 cottages for labourers and servants to be employed on the farms near the farm buildings. It appeared that the trustees were empowered to apply the proceeds of timber cut by them, and of sales and exchanges effected with the consent of the plaintiff, the ténant for life, in paying off incumbrances, debts, and legacies, or in the improvement of the manors and hereditaments by the erection of farm-houses and outbuildings, or by draining or planting, or otherwise; and that the farms were at a distance from any village, and could not be properly cultivated for want of cottages for labourers. It was also alleged that the value of the property would be increased to the amount proposed to be thus expended.

Giffard in support; Hobhouse for the trustees.

The Vice-Chancellor made the declaration as prayed.

Boyse v. Rossborough and wife. Nov. 4; Dec. 5, 1853.

WILL.—ESTABLISHING AS AGAINST HEIR-AT-LAW.—JURISDICTION.

Held, that the Court of Chancery has jurisdiction in a suit to establish a will against the heir-at-law, although there is only a simple devise of land and no trust; and a demurrer to a bill was accordingly overruled.

THE testator, by his will, gave and devised all and singular his real and personal estate to his wife (the plaintiff), her heirs, executors, administrators, and assigns, to and for her and their own absolute use and benefit. It appeared that part of the property was situate in England and part in Ireland, and that the de-

defendants, the testator's heiress-at-law, and her husband, had instituted a suit in Ireland to obtain a declaration that the will was void on the ground the testator was of unsound mind, and was under the undue influence of the plaintiff, and that on an issue being directed the will had been declared invalid, but an appeal was now pending to the House of Lords from decision of the Irish Court refusing a new trial. It also appeared that the defendants had taken no steps in this country in respect of the real estates here, which were in the possession of the plaintiff, and this suit was therefore instituted to have the will established as against the defendants, and for an issue if deemed necessary. The bill also alleged that the statements on which the decision had been obtained in Ireland were untrue, and the refusal of a new trial erroneous.

Russell and Young in support of a general demurrer for want of equity, there being a simple devise and no trusts to execute.

Solicitor-General, Rolt, and Cairns contra.

Cur. ad. vult.

The *Vice-Chancellor* said, the jurisdiction of this Court to decide on the validity of wills, seemed to have arisen before the passing of the 32 Hen. 8, c. 1, the Statute of Wills, and it appeared on reference to early decrees so far back as 1573, that the Court had taken on itself, by inquiry before the Master, to determine such questions, but shortly before the Statute of Frauds, 29 Car. 2, c. 3, a reference was sent to a Court of Law, the cause still being retained in this Court. The origin of the jurisdiction in establishing wills against the heir-at-law was, however, involved in great obscurity, but it appeared to have been acquired gradually and silently, and it was difficult to see how such jurisdiction could have been assumed, merely because there were trusts to execute. But whether there were a trust or no trust, could make no difference with respect to the heir, who was always entitled to an issue, and when the will was found valid thereunder, this Court would establish it. The demurrer would therefore be overruled, but without costs—the defendants to have a month's time in which to put in their answer. ¹

Read v. Prest. Dec. 5, 1853.

EXAMINATION OF WITNESSES IN THE COUNTRY.—PRACTICE.

Held, that the former practice as to the appointment of an examiner still exists where the witnesses are resident more than 20 miles from London, and an order was made on motion for the appointment of a barrister to take such examination, although it appeared some of the witnesses had been already examined in London before the examiner.

The application may be made to the Court as well as at Chambers.

¹ An immediate issue was then tendered by the plaintiff, but was rejected.

This was a motion for the appointment of one out of two solicitors at Maidstone to examine certain witnesses who were resident at a distance about 20 miles from London.

Webb in support; *Howe*, contra, on the ground the application should be made at Chambers, and that some of the witnesses had been examined in London before the Examiner.

The *Vice-Chancellor* said, it was not compulsory to make the application at Chambers, although it might have been made there, and that as the former practice in respect of witnesses resident more than 20 miles from London was not altered, the order would be made, but that, under the special circumstances of the case, a barrister, to be agreed on between the parties, must be appointed,—the costs to be costs in the cause.

Court of Queen's Bench.

Regina v. Inhabitants of Llanfaethly. Nov. 19, 1853.

ORDER FOR REMOVAL OF PAUPER.—PAYMENT OF RATE.—PRODUCTION OF RATE-BOOKS.—SECONDARY EVIDENCE.

On the hearing at the Sessions in a pauper removal case, it appeared a subpoena duces tecum had been served on the parish officers to produce the rate-books to show the payment by the pauper of a rate, and on their not attending, secondary evidence of such payment was tendered: Held, that it had been properly rejected, as the persons subpoenaed were not parties to the case.

IN this case, from the Anglesea Sessions, it was alleged that a pauper named Hughes had rated a tenement and paid a rate of 2s. 6d. in respect thereof, but on the hearing the fact of such payment was proved, but the rate-books were not produced to show the payment was of a lawful rate. A subpoena duces tecum had been served on the parish officers to produce the books, but it was stated to have been served on the wrong party. Secondary evidence of their contents was thereupon rejected, and an order for his removal was made.

M. Lloyd in support of the order; *Welsby*, contra, citing *Rex v. Inhabitants of Coppull*, 2 East, 25.

The Court said, that in the case cited the persons declining to produce were parties to the case, which was not so here, and the remedy was against them for disobeying the subpoena, and the evidence had been properly rejected. The order of Sessions was therefore confirmed.

Regina v. Mayor, &c. of Manchester. Nov. 19, 1853.

POOR.—LIABILITY OF GASWORKS TO BE RATED.—EXEMPTION IN LOCAL ACT.

By the 14 & 15 Viet. c. cxix, s. 138, continuing the 11 Geo. 4, and 1 Wm. 4, c. xlvii., s. 107, certain gasworks, &c., were exempted from poor-rate so long as the property was held in trust for the town

ship of Manchester, and by s. 13, power was given to apply a portion of the profits in the reduction of the water-rates, under the 10 & 11 Vict. c. cciii. : Held, that the property, including a part purchased after the 6 & 7 Vict. c. xvii., which transferred the power of the former Commissioners to the defendants, was exempt from poor-rate, although other townships in the neighbourhood had been incorporated with the town and contributed to the expenses, but received no benefit from the profits of the works.

By the 32 Geo. 3, c. lxix., Commissioners were appointed for lighting the township of Manchester, with power to levy rates for the purpose on the inhabitants, and by the 9 Geo. 4, c. cxvii., s. 49, the profits to be derived from the gas-works were to be applied to the improvement of the town of Manchester. The works, by the 11 Geo. 4, and 1 Wm. 4, c. xlvi., s. 107, were exempted from the poor-rate, so long as the property was so held in trust, and this exemption was continued by the 14 & 15 Vict. c. cxix., s. 138, which Act empowered the enlarging of the works, and by s. 13, empowered the application of a portion of the profits in reduction of the water-rates levied under the 10 & 11 Vict. c. cciii. It appeared that the townships in the neighbourhood were incorporated in October, 1838, by charter in pursuance of the 7 Wm. 4, and 1 Vict. c. 78, with the town of Manchester, and contributed to the expenses, but the profits were only expended in improving the town. The defendants, to whom the powers of the Commissioners were transferred by the 6 & 7 Vict. c. xvii. had been rated to the poor in respect of the lands and buildings occupied as such gas-works, part of which was purchased after the passing of the 6 & 7 Vict. c. xvii., whereupon this appeal was presented.

Pashley and Wheeler in support of the rate, on the ground the townships derived no benefit from the profits of the works; *Hugh Hill and Monk*, contra.

The Court said, that the exemption still prevailed in respect of the whole property held in trust for the township, although it might operate very unjustly on the townships, and the appeal was therefore allowed.

Regina v. Eggington. Nov. 21, 1853.

ARREST. — DETAINER AT SUIT OF THIRD PARTY AFTER ORDER FOR DISCHARGE.

An order had been made on habeas corpus for the discharge of a prisoner improperly arrested on a Sunday for a civil offence. The gaoler continued to detain him under a ca. sa. at the suit of a private creditor : Held, that the detainer was regular, and a rule for the discharge was dismissed, without costs.

In this case an order had been made on Nov. 2 last, for the discharge from custody of a prisoner, who had been committed under the

5 & 6 Wm. 4, c. 76, s. 60, for refusing to deliver up certain accounts, &c., on his removal from the office of town clerk, on the ground of the arrest having taken place on a Sunday (reported ante, p. 15). It appeared the prisoner was, however, detained under another warrant issued by the Town Council as Commissioners of Paving under a Local Act, and on Nov. 4 a ca. sa. at the suit of a creditor was lodged, under which the prisoner was now detained, and this rule had therefore been obtained for his discharge.

Pashley for the Town Council, Griffiths for the creditor, showed cause.

Gray in support, citing *Barratt v. Price*, 2 M. & Scott, 634; 9 Bing. 566; 1 Dowl. P. C. 725.

The Court said, that, although the prisoner was entitled to be discharged so far as the detainer of the Town Council was concerned, who were substantially the same parties obtaining the illegal arrest, and could not take advantage of their own wrong, he was not entitled to be discharged in respect of the detainer at the suit of a private creditor, and the rule must be discharged, but without costs.

Stephenson v. Rayne. Nov. 3, 23, 1853.

COUNTY COURT. — PLAINT BY CLERK OF PAROCHIAL CHAPELRY. — TITLE. — JURISDICTION.

On the trial of a plaint in a County Court by the clerk of a parochial chapelry, to recover from an inhabitant householder the amount of his wages, an objection was taken as to jurisdiction, under the 9 & 10 Vict. c. 95, s. 58—the plaintiff's title to the office, and to the payment in question being disputed : A rule was made absolute for a prohibition against the further proceeding in the plaint, and an application was refused for the defendant to declare in prohibition.

THIS was a rule nisi for a prohibition on the Judge of the Durham County Court, from further proceeding in this plaint, which was brought by the clerk of the parochial chapelry of Barnard Castle, to recover from the defendant, an inhabitant householder, the sum of 1s. 8d., his wages for five years, at the rate of 4d. per annum from each inhabitant householder, and payable at Easter. On the trial an objection was taken, that the Court had not jurisdiction under the 9 & 10 Vict. c. 95, s. 58,¹ as the plaintiff's title to the office and to the payment of the sum demanded was disputed, and judgment was postponed for this application.

Cowling showed cause against the rule, which was supported by Bovill.

Cur. ad. vult.

The Court said, the question was, whether the claim was within the 58th section, as in-

¹ Which provides, that "the Court shall not have cognisance of any action" in "which the title to any corporeal or incorporeal hereditaments" "shall be in question."

volving the title to an "hereditament." It was their duty to put a liberal construction on the language of the Act of Parliament, and an "office" was included in a "tenement," which was comprehended in the word "hereditament." The rule for a prohibition would therefore be made absolute, and an application was also refused for an order on the defendant to declare in prohibition.

Warrington v. Early. Nov. 5, 23, 1853.

PROMISSORY NOTE.—MATERIAL ALTERATION.—INTEREST PAYABLE.

The amount of a promissory note had been made payable with lawful interest from the date thereof, and it appeared a memorandum had been written in the corner that interest was to be paid at the rate of 6 per cent., without the defendant's concurrence: Held, that this was a material alteration, and the plaintiff could not recover on the note.

This was a motion for a rule nisi to set aside the verdict for the defendant and enter it for the plaintiff on the plea in this action, which was brought on a promissory note to pay, six months after date, the sum of 1,000*l.*, with lawful interest from the date thereof, which alleged that after the making of the note, and before it became due, it had been altered in a material particular, without his consent, by there being written in the corner of the note that interest at 6 per cent. was to be paid. On the trial, before *Crompton, J.*, at Oxford, the defendant obtained a verdict, subject to this motion.

Keating in support.

Cur. ad. vult.

The Court said, the alteration in the corner of the note must be viewed in the same light as if it had been made in the body. There was no particular usage of commerce to warrant its insertion as in the case of the place of payment, and the alteration being unauthorised the contract was vitiated. The rule would therefore be refused.

Ezparte Geswood. Nov. 24, 1853.

COMMITMENT OF COLLIER FOR LEAVING EMPLOY WITHOUT LAWFUL EXCUSE.—SUFFICIENCY OF.—EVIDENCE, SETTING OUT.

A collier had been committed to prison under the 4 Geo. 4, c. 34, s. 3, for leaving his service without giving notice, and without assigning any lawful excuse: Held, that the prisoner was entitled to his discharge, on the ground the warrant did not allege he had no sufficient lawful excuse for leaving his employment.

Held, also, that the warrant of commitment need not set out the evidence.

A RULE nisi had been obtained on Nov. 15 last, to discharge from custody a collier who had been committed to Stafford Gaol for two months with hard labour by the stipendiary

magistrate at Stoke-upon-Trent, under the 4 Geo. 4, c. 34, s. 3, for leaving his service without giving notice, and without assigning any lawful excuse. The rule had been granted on the ground that the commitment should have set out the evidence, citing *In re Hammond*, 9 Q. B. 92, and that it did not allege the defendant had no sufficient lawful excuse for leaving his employment.

Scotland in support.

The Court said, there was no authority to show that the evidence must be set out in a commitment, but the rule would be made absolute on the ground the warrant did not allege any offence had been committed within the Act, as the gist of the charge was, that the prisoner had been absent without assigning any lawful excuse.

Wilbraham v. Bickley. Nov. 25, 1853.

NEW TRIAL.—POSTPONING APPLICATION FOR RULE NISI.

An application was refused to postpone, until the commencement of Hilary Term, the motion for a rule nisi for a new trial, on the ground the evidence was very voluminous and the trial had only ended the previous day.

In this motion for a rule nisi to set aside the verdict for the plaintiff and for a new trial on the ground the verdict was against the weight of evidence,

Shee, S. L., applied for leave to move the commencement of Hilary Term, as the evidence was very voluminous, and the trial had only terminated the previous day.

The Court, however, said, the application could not be granted, and on the motion being proceeded with refused the rule, as the presiding Judge was not dissatisfied with the verdict.

Regina (on the prosecution of Scott and others) v. Harrison. Nov. 25, 1853.

CRIMINAL INFORMATION FOR LIBEL.—MOTION FOR RULE ON LAST DAY OF TERM.

Held, that a motion for a rule nisi for a criminal information for libel will not be entertained on the last day of Term.

This was a motion for a rule nisi for a criminal information on the publisher of *The Times* for a libel on the directors of the London and South Western Railway Company.

The Attorney-General and *Bovill* in support.

The Court said, that, according to the practice the motion could not be allowed to be made on the last day of Term.

In re William Marshall. Nov. 25, 1853.

ATTORNEY.—RESTORATION TO ROLL.—MASTER OF ROLLS' ORDER.

An attorney had been struck off the roll of this Court on an order by the Master of the Rolls to strike him off the Roll of Solicitors. On his being restored by the

Master of the Rolls, an application was granted for his restoration to the Roll of this Court.

THIS was a motion to restore the name of the above attorney to the Rolls of this Court. It appeared he had been struck off the Roll of Solicitors by the late Lord Langdale, Master of the Rolls, in Dec. 1842, in reference to misconduct in a bankruptcy, on the petition of the Birmingham Law Society, and had been thereupon struck off the Rolls of this Court. It appeared the Master of the Rolls had, on July 13 last, made an order for his restoration to the Roll (reported *ante*, vol. 46, p. 199), and this motion was accordingly made.

Sir F. Thesiger, in support, stated, that notice had been given to the Incorporated Law Society, who did not oppose.

The Court said, that as the applicant had been removed from the Roll of this Court on the order of the Master of the Rolls, he would be restored on the same authority, and the motion was therefore granted.

Court of Common Pleas.

Tarrant v. Baker. Nov. 18, 1853.

BOROUGH COURT.—OFFICER.—NOTICE OF ACTION.

Held, that a bailiff of a Borough Court, who had not been appointed formally by the Judge was not an officer within the 7 & 8 Vict. c. 19, and was not therefore entitled to notice of action under s. 8.

A RULE nisi had been obtained in this Term on leave reserved to set aside the verdict for the plaintiff and enter it for the defendant in this action, which was brought for breaking and entering the plaintiff's house at Birmingham, and injuring his furniture, to which the defendant pleaded that he was bailiff of the Borough Court, and committed the trespass in question in pursuance of his duty, and also that no notice in writing had been given of the action. There was a further plea that he entered by virtue of a writ of execution of which he had the carrying into effect, directed to the serjeant-at-mace. On the trial, before Alderson, B., at the last Warwick Assizes, it appeared the defendant had not been formally appointed by the Judge of the Court, although he executed its process.

Hayes showed cause against the rule, citing 7 & 8 Vict. c. 19, s. 8.

Moller in support.

The Court said, the defendant had failed to make out his plea of his being appointed an officer by the Judge of the Court within the 7 & 8 Vict. c. 19, and assuming the Court was within the Act, the privilege as to notice only extended to the serjeant-at-mace, and not to the defendant, as the Act did not require notice to be given to all persons lawfully acting under him, and the rule must be discharged.

Rigg v. Whisking. Nov. 25, 1853.

PURCHASE OF TIMBER IN PARCELS.—CON-

SOLIDATION INTO ONE ACCOUNT.—STATUTE OF FRAUDS.

The defendant purchased of the plaintiff a quantity of willow timber in different lots at various places, and the whole transaction was afterwards included in one account. Part was paid for, another part was delivered, but the defendant refused to accept the remainder: Held, that the dealings formed one transaction, and there had been a sufficient part payment and acceptance under the Statute of Frauds to entitle the plaintiff to recover for the remainder.

THIS was an action for goods sold and delivered, which consisted of a quantity of willow timber purchased by the defendant from the plaintiff, at Diss, Norfolk. It appeared that the defendant had gone about to various places to look at the timber, purchasing different lots, and that in the evening the transactions were made up into one account. It also appeared that the defendant had paid for a portion of the timber, that another part had been delivered, but that the remainder, which was at the Eastern Counties' Railway station, he had refused to accept. On the trial, before Cresswell, J., at the London Sittings, this Term, the plaintiff obtained a verdict, whereupon this motion was made for a rule nisi for a new trial on the ground of misdirection.

Byles, S. L., in support, on the ground the purchase of each parcel was a separate transaction, in respect of which there had been no acceptance or part payment to take the case out of the Statute of Frauds, as regards parol contracts.

The Court said, the learned Judge had rightly directed the jury that the whole transaction was one purchase, in accordance with *Elliot v. Thomas*, 3 M. & W. 170; 1 Horn. & H. 38; and that there had been a sufficient part payment and acceptance. The rule would accordingly be refused.

Court of Exchequer.

Morgan and another v. Marquis and another.

Nov. 2, 1853.

BANKRUPT.—SALE OF GOODS BY PARTY JOINTLY INTERESTED.—RIGHT OF ASSIGNEES TO RECOVER PROCEEDS.

The defendant sold certain goods by direction of J., who was jointly interested therein with a person declared a bankrupt: Held, that the assignees were not entitled to recover the proceeds of such sale—but that their course was to proceed in a Court of Bankruptcy or of Equity for an account.

THIS was a motion to set aside the verdict for the defendants, and for a new trial in this action for money had and received to the plaintiffs' use, and which was brought to recover the proceeds of certain barrels of flour sold by the defendants, commission agents in Liverpool. It appeared that the defendants had purchased a quantity of flour by the direction of Mr. Perrin, a Liverpool merchant, and

had sold a portion by direction of him and a Mr. Shute, who had advanced money for the purchase, and the sale of the remainder took place by direction of Mr. Shute, after Mr. Ferrin had committed an act of bankruptcy, and the plaintiffs were appointed his assignees. The defendants pleaded never indebted and *non detinent* to a count in *detinue*, and on the trial before *Erle, J.*, at the last Liverpool Assizes, they obtained a verdict.

Hugh Hill in support.

The Court said, as the jury had found that Shute was jointly interested with the bankrupt in the goods, he was entitled to dispose of the partnership property, in accordance with *For v. Banbury*, Cowp. 445, and the plaintiffs had no right to recover the proceeds from the defendants, but must proceed in a Court of Bankruptcy or of Equity for an account. The rule would therefore be refused.

Nicholls and others v. Diamond. Nov. 3, 1853.

BILLS OF EXCHANGE.—ACCEPTANCE PER PROC. OF MINING COMPANY.—AUTHORITY.

The defendant, to whom two bills of exchange were directed as purser of a mining company, accepted per proc. of the company, of which he himself was also a shareholder: Held, that as he was not authorised to accept for the company, and who besides were not drawees, he was personally liable for the amount of his acceptance.

THIS was a motion for a rule *nisi* to set aside the verdict for the plaintiffs and to enter it for the defendant in this action, which was brought on two bills of exchange directed to the defendant as purser of the West Downs Mining Company, and accepted by him per proc. of such company. On the trial before *Talfourd, J.*, at the last Devon Assizes, it appeared that the defendant was a shareholder in the company, which was not a corporate body, and the jury, under the direction of the learned Judge, found for the plaintiffs, subject to this motion.

M. Smith in support.

The Court said, the legal effect of the acceptance was, that the defendant accepted in his own right as principal, as he had no right to accept for the other parties, they not being drawees, and the rule was accordingly refused.

Court of Criminal Appeal.

Regina v. Garrett. Nov. 26, 1853.

INDICTMENT FOR OBTAINING MONEY UNDER FALSE PRETENCES.

*The prisoner had altered a letter of credit for 210*l.*, on the Union Bank of London into 5,210*l.*, and had obtained in St. Petersburg 1,200*l.*, giving a cheque for such sum on the English bank to the firm at St. Petersburg, who presented the cheque which was dishonoured: Held, reversing a conviction, that the prisoner could not be indicted for attempting to obtain moneys*

under false pretences under the 7 & 8 Geo. 4, c. 29, s. 53.

IT appeared on this indictment for attempting to obtain moneys under false pretences, that the prisoner had obtained a circular letter of credit from Messrs. Duncan & Co., of New York, for 210*l.*, on their correspondents the Union Bank of London, and that he had altered the sum to 5,210*l.* The prisoner had obtained certain sums of money from Messrs. Wilson & Co., at St. Petersburg, and had given them a cheque for 1,200*l.* on the Union Bank, but which was dishonoured on presentation, and on the prisoner's coming to this country, he was indicted in respect of such cheque. On the trial, before *Parke, B.*, the jury returned a verdict of guilty, subject to this point reserved.

Byles, S. L., and *Robinson*, for the prisoner, citing the 7 & 8 Geo. 4, c. 29, s. 53,¹ and *Res v. Warell*, 1 Mood. 324.

Huddleston in support of the conviction.

The Court said, even if the cheque had been duly honoured, the prisoner could not have been indicted for obtaining money under false pretences, as the obtaining within the meaning of the Statute contemplated an obtaining according to the wishes or in order to gain some advantage. But in the present case the prisoner had obtained his object on receiving the money in St. Petersburg, and no advantage could arise to him from the cheque being honoured, but on the contrary, it was more to his advantage if it had been destroyed. Although, therefore, there had been a gross fraud, there was no obtaining of money under false pretences within the Statute, and the conviction must be reversed.

Regina v. Sleeman. Nov. 26, 1853.

CONFESSION.—ADMISSION IN EVIDENCE.

Circumstances under which the confession of a prisoner charged with arson was admitted in evidence on an indictment for such offence.

ON this indictment for arson, before *Martin, B.*, evidence was received of the prisoner's confession, which had been given upon the person having charge of her saying "Don't run your soul into more sin, but tell the truth." The prisoner had previously denied her guilt on the witness expressing her regret at her situation, and inquiring whether she were guilty or not.

The Court said, the evidence was admissible, as no threat or inducement had been held out, and confirmed the conviction.

¹ Which is as follows:—"Whereas a failure of justice frequently arises from the subtle distinction between larceny and fraud; for remedy thereof be it enacted, that if any person shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor."

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 17, 1853.

THE NEW REFORM BILL.

REPRESENTATION OF THE LEGAL PROFESSION.

THE Government is pledged to introduce, in the next Session of Parliament, a Bill to amend the representation of the people. Some attempt will, no doubt, be made to check the systematic bribery and corruption found to prevail, not only in the smaller constituencies but in some of the larger cities and boroughs. The disclosures of Election Committees during the last Session of Parliament, have served formally to record, what was before universally felt and thoroughly well understood, that the representative system is unsound to the core, and that the elective franchise is constantly and commonly exercised under the influence of the most sordid motives. No one supposes that the constituencies whose delinquencies have been exposed, differ materially from others that, by accident or corrupt compromise, have escaped investigation. The disease is not confined to any particular locality, but is in the nature of an epidemic, and the remedy is not to be found in the disfranchisement of some half-dozen boroughs, which recent disclosures have rendered temporarily notorious: it must be co-extensive with the disease.

The measure of amendment to be proposed will probably involve, as well a change of the basis of representation by an extension of the franchise, as the adoption of a higher standard of qualification. The adoption of either principle exclusively would be open to manifest objections. A simple extension of the suffrage to a class not more elevated as regards property or intellectual cultivation than the majority of those to whom it is now entrusted, would afford no additional security against corrupt influ-

ences. On the other hand, an increase of the qualification restricting the number of voters, and operating as a partial disfranchisement of existing constituencies, would conflict with the principles of free Government, and justly create an amount of hostility and opposition which no Minister, however powerful and honest, could successfully contend against. A measure combining an extension of the franchise with a higher standard of qualification has a far better chance of success, and would probably obtain the support of a large proportion of those, who do not regard the question with a view to its effects upon the interest of a party or the promotion of individual ambition.

It is altogether beside the purpose of these remarks to discuss the precise extent to which it is expedient to carry the revision of the electoral system. The contemplated changes are only adverted to, in order to express a hope that the opportunity about to be presented may not be inconsiderately lost. A similar opportunity cannot speedily, and may never, again occur to those we address. It is in vain now to inquire whether any modification of the representative system is desirable. It is already determined upon by the Government of the country. The question must be mooted and decided upon. The expediency of creating new constituencies will be discussed and settled—not at the instance of revolutionary agitators—but upon the deliberate suggestion of the responsible Ministers of the Crown. Existing arrangements are, to a greater or less extent to be disturbed; and does not this state of things, we ask, afford a legitimate occasion, at least, for considering the claims of the Legal Profession to a direct representation? The members of the Inns of Court, and Chancery, united with the registered Attorneys and Solicitors, would create a constituency

numerically large, and certainly not inferior in independence and intelligence to any other in the kingdom. The suggestion, that the Legal Profession should have the power of sending a representative to the House of Commons, will be met at starting by the observation, that the House already contains many lawyers. It is quite true, the House of Commons does contain a considerable number of Barristers, and a few Solicitors, but it is equally true, that no one of these gentlemen has gone into Parliament to represent, nor does in fact represent, the Legal Profession. Some, and we are constrained to admit, a large proportion, enter Parliament with no higher object than the promotion of personal ambition: a few represent the political views of great proprietors through whose influence they have been returned; and others represent—faithfully it may be—the prevailing views of those by whom they are elected. We are aware that it has been the fashion for a particular party, and to serve a temporary purpose, to exaggerate the influence of lawyers in Parliament; but, so little are the lawyers in the House of Commons identified with the Profession, that if any measure was deemed desirable which especially affected the interests of the Legal Profession, it would be more difficult to find a legal than a lay member to whom it could be entrusted.

The privilege enjoyed by the Universities of Oxford, Cambridge, and Dublin, respectively, of sending Members to Parliament, and the manner in which that privilege has been exercised, furnishes a strong argument in support of the proposition, that the Inns of Court and Chancery should also be represented. Although many members of the Legal Profession have graduated at the University, to have taken a degree is not a necessary qualification for either branch of the Profession, and in point of fact a comparatively small proportion of either barristers or solicitors are entitled to vote at the University elections.

The political excitement preceding and attending the passing of the Act of 1832, accounts for, though, it does not perhaps justify, the exclusion from legislative consideration of the claims of the Inns of Court to be represented, at the time when the Metropolitan Boroughs were constituted. The subject is now approached in a calmer and a more promising spirit. Less conflict of opinion prevails as to the defects of the representative system, and the measure about to be introduced is not as yet, and it may be hoped will not, be regarded as the

subject of a party triumph. If the suggestion we have now ventured, not to originate but to revive, was taken up in a hearty and united spirit by all branches of the Legal Profession, there is no reason why it should not receive the respectful and even the favourable consideration of her Majesty's constitutional advisers. The proposition could hardly fail to be acceptable to many who would regard a general extension of the elective franchise with apprehension and distrust. The proper leaders in a movement with a view to this object, would be the Benchers of the Inns of Court, and the Council of the Incorporated Law Society; but these bodies could scarcely be expected to act in such a matter without some clear and unequivocal manifestation of the sense of the Profession. It is not to disparage them to say, that in this instance they require the "pressure from without."

Believing that the presence of *even one member* in the House of Commons elected by the direct suffrages of the barristers and solicitors of England and Wales, would be attended with incalculable advantage to the public, no less than to the Profession, we have ventured to call attention to the subject, as eminently deserving of immediate consideration. If the suggestion is worthy of adoption and capable of realisation, no time should be lost in organising the strength of the Profession. Parliament is expected to meet for the despatch of business early in February. The New Reform Bill will, no doubt, be announced in the Speech from the Throne, and introduced at an early period of the Session by the Government in the House of Commons. With energy and resolution much may be done in the interval. The Provincial Law Societies number amongst their members some of the ablest men of business of the kingdom. Through the instrumentality of these societies, the opinion of the Profession in the country can be readily ascertained, and the means of giving practical effect to that opinion pointed out. In the metropolis, still greater facilities exist for collecting the sentiments of those whose co-operation would be indispensable, if the plan is to be seriously pressed upon the attention of the Government and the Legislature. ~~Without under-~~ ~~rating the difficulties to be overcome, or~~ ~~disregarding the opposition to be encountered,~~ we submit the project to our readers, to determine whether it is ~~feasible~~ and would justify a concerted effort.

If the Inns of Court, which constitute in fact, though not in name, a legal University,

were placed on a similar footing, as regards parliamentary representation, with the other great Universities, it may not be certain that we should always send to the House of Commons the ablest, the wisest, or the best man; but the Public would at least have the assurance that the suffrages of such a constituency would be freely and independently exercised. The purse of the *millionaire*, the authority of the landed proprietor, and the power of the Government, would be vainly exerted to control *this* body of electors. The honour of representing the Inns of Court might be expected to satisfy ordinary ambition, and a knowledge that such a distinction was attainable could hardly fail to operate as a salutary incentive to minds of the highest order. The profession in its integrity would have what it has long required—an organ in the Legislature—and the fault would be our own if we were not efficiently as well as faithfully represented.

ADMINISTRATION OF JUSTICE.

COMPLAINT AGAINST MR. WARREN, Q. C.,
THE RECORDER OF HULL.

"CENSURE is the tax a man pays for being eminent." The Judges of our Superior Courts have not unfrequently been the objects of severe attack in the public journals. It is not marvellous, therefore, that a person so celebrated as Mr. Warren should be occasionally visited with animadversion. It appears that, out of the large number of 230 prisoners tried before the learned Recorder, eight have been ordered to be whipped, and one in particular, a youth of the age of 15, at the last Sessions, was sentenced to 18 months' imprisonment, and during that period to be whipped four times. Thereupon a violent and outrageous article appeared in the *Eastern Counties' Herald*, against such supposed undue severity, and one of the sapient inhabitants of Hull thought proper to transmit the paper to the Home Secretary. The charge thus rested upon anonymous information. Representations, we understand, were also made of the ill state of health of the culprit, and good nature (not to say the inclination to popularity) induced the noble Lord to reduce the imprisonment to six months, and to remit the "remainder" of the whipping, — of which however none had been inflicted.

Our knowledge of the abundant kindness of disposition of Mr. Warren, and the sympathy which he would feel towards any juvenile offender whose case really deserved

a merciful consideration, readily satisfied us that the sentence, severe as it might appear, was intended equally for the benefit of the offender and the protection of the Public. We have, however, made it our business to inquire into the facts and circumstances of the case, and are glad to find in the columns of a local paper, the *Hull Advertiser*, a complete vindication of the whole of Mr. Warren's conduct. It appears that the prisoner in question had been *thrice* previously convicted of felonies, but sentenced only to short imprisonments, and that the last offence was of a more flagrant character than any of the former. It was, of course, desirable to sever this young offender from his bad associates, and, if possible, to teach him some industrious trade. To effect this object, not less than 18 months would be sufficient. We fear that the mitigation of the sentence will return him but little improved in his moral condition. The extent of the corporal punishment would, of course, be regulated by his conduct; but now the terror of the whip is at an end, the remainder of the six months will soon pass away, and none can tell the result.

From the *Hull Advertiser* we extract the following Letter of the Clerk of the Peace, which fully refutes every part of the imputation:—

"To the Editor of the *Hull Advertiser*."

"SIR,—It is proper to rectify certain misapprehensions concerning the administration of justice in this borough at Quarter Sessions, which have been occasioned by a letter published in the *Eastern Counties' Herald* of Thursday last, alleged to have been sent to the Secretary of State for the Home Department, and therefore I think it my duty as clerk of the peace to trouble you with the following observations. The letter above alluded to contains several grave errors.

"First—The case of William Cooper Robinson is alleged to be 'a particularly striking instance of the inequality of the Recorder's sentences,' as that prisoner, 'convicted of attempting to obtain 1,000*l.* by false pretences, was only sentenced to 18 months' imprisonment, *without hard labour*.' This was a common law misdemeanor, and the Recorder had no power by law either to transport or impose hard labour, and, in sentencing the prisoner, expressed his regret that such was the case, and in very severe terms commented on the offence as grievously aggravated by the station and profession of the prisoner. The sentence of 18 months' imprisonment inflicted on a man of education and a solicitor, and in the gaol of his own town, was ruinous. He said on quitting the dock that he would rather have been trans-

ported; and he is now in a lunatic asylum, hopelessly insane.

"Second.—The boy Regan (aged 15), is alleged to have committed only '*trivial crimes*.' He had been three times previously convicted of felony, viz., on the 11th Nov. 1852, the 27th April 1853, and the 27th May following. He had on each occasion been sentenced by the magistrates to a short period of imprisonment, and on one occasion to be whipped. On the 11th October he was nevertheless again committed on a clear case of felony, aggravated by ingratitude; and the indictment expressly charged two of the previous convictions, in conformity with the recent Statute 12 & 13 Vict. c. 11, s. 3, by which he was liable to *two years'* imprisonment. The Recorder expressly stated in passing sentence, that his object was to reclaim an apparently incorrigible offender, and separate him for a long period from his guilty companions. He also sentenced him to be *four* times, not *five* times privately whipped at intervals during the imprisonment, as one whipping had proved ineffectual. He also himself secured for the prisoner the assistance of a leading counsel at the Sessions, by whom he was vigorously defended. The foreman of the jury recommended the prisoner to mercy, supposing it a first offence, but on hearing of the three convictions, abstained from doing so. The Recorder visited the prisoner in the gaol after the Sessions, when he expressed gratitude for having had a counsel given him by the Recorder. He made strict inquiries as to the state of the prisoner's health, (as he had had, since the sentence, a fit of an epileptic nature, but from which he was recovering), and shortly afterwards the Recorder wrote from London to the governor on the subject, and found that though apparently well enough at the period of his committal and trial, he was not in good health, and that otherwise than in respect of epileptic fits; that a physician was going to visit him, and, if necessary, he would be transferred to the infirmary. I have every reason for believing that under the circumstances, any application for a remission of either the whippings or imprisonment would have been supported by the Recorder himself; whose own authority had expired with the Sessions. No whipping at all has been inflicted on the prisoner, who is now conducting himself satisfactorily in the gaol, and attends school, and is learning a trade.

"Third.—The letter speaks of '*painfully numerous flogging sentences*' inflicted by the Recorder. Now out of 230 prisoners tried by him, many of whom were liable to whippings, he has ordered whippings in only *eight* cases, and every one of those of apparently incorrigible boys, who had been previously convicted of felony and other offences twice, thrice, four, and even *eight* times. When it is necessary to carry the sentence into effect, the surgeon is present; the character of the infliction depends entirely on the conduct of the prisoner in the gaol, and there has been no single instance of undue severity. The effect is declared

by both the governor and chaplain to have been very salutary.

"The Recorder did not sentence any prisoner to be whipped until his third Sessions, when he found it necessary from the increasing numbers and recklessness of juvenile offenders. The result is—that, as stated in the chaplain's report to the magistrates at the last Sessions, '*there are now fewer prisoners than there have been at any time since October, 1846*;' and that, whereas, '*the two calendars preceding the last contained no fewer than 17 prisoners under 18 years of age, the last contained only two*.'

"The Recorder's humane anxiety to do full justice to every prisoner, and the special pains he takes to inform himself of all facts bearing on the quantum of punishment, are known to all who attend the Court; and he constantly states, when the occasion arises, that his object in punishing is to reclaim and prevent.

"I believe there is not a prisoner in the gaol who does not admit having had a fair and impartial trial.

"All the foregoing facts can be verified by the proper authorities, and it is right that they should be known, to prevent misunderstanding, out of respect to the Judge and all concerned in administering justice."

"J. H. GALLOWAY, Clerk of the Peace."

"Hull, 7th Dec., 1853."

An able leading article appeared in *The Hull Advertiser* on this subject, and which we extract because it must be disinterested, for the Editor and Mr. Warren are of different political sentiments. A sense of justice, however, has induced the writer, not only to insert the preceding Letter of the Clerk of the Peace, but to bear honourable testimony to the judicial conduct and character of Mr. Warren during the whole period of his recordership:—

"The seeming censure upon the learned Recorder of this borough, implied by the remission of the sentence passed upon a young felon named Regan, by the noble Secretary for the Home Department, has induced the Clerk of the Peace, Mr. Galloway, to address to us an exceedingly well-written letter, with a view to correct the mischievous reports put abroad upon the subject. In the first place, we beg to assure Mr. Galloway that no impression unfavourable to the conduct of the Recorder, as an upright, pains-taking, conscientious, and really humane Judge, found at any time a place in our mind. Almost as constant in our attendance at the Court of Quarter Sessions as the Recorder himself, and rendered doubly observant by our opposition to many of his well-known political opinions, we enjoyed opportunities of forming a judgment as to his real merits, which enabled us to treat with contempt the silly gossip which found its way into some of the London papers concerning him. And being opposed on principle to the whole system of flogging, whether in the army, the navy, the

prison, or the public school, we were especially careful to ascertain, long before the boy Regan was tried, the degree of severity, and the exact circumstances under which the punishment of whipping was inflicted in the Hull Borough Prison. The result of that inquiry was, to satisfy us that, supposing the punishment of whipping to be retained, it did not matter a great deal whether in 18 months a lad was sentenced to be punished twice or four times. We knew right well that the first person to inquire about the state of the prisoner's health, and, if necessary, to suggest mild and reformatory treatment, would be the presiding Judge, Mr. Warren. We feel confident that if it was deemed by the governor, the surgeon, the chaplain, or the visiting magistrates, desirable to obtain a remission of the lad's sentence in consequence of either bad health, or wonderful moral improvement, the Recorder would be one of the very first to suggest an application to Lord Palmerston,—nay, he would be the very first to petition the Crown to be made the bearer of a message of mercy to the prisoner. And even now, it may be that he was consenting to the exercise of the Royal Prerogative of mercy by the noble Home Secretary. The only mistake now made, was the not selecting the Recorder as the medium of making known to the people of Hull the remission of Regan's sentence. And we have not the least doubt that this resulted from the noble Home Secretary not being aware of Mr. Warren's personal attention to the interior economy and general management of the Hull Gaol, as well as to the individual condition of the prisoners. Before Mr. Warren's time, it was very unusual for learned Recorders of this borough to trouble their heads in the way which he does about the reformation of the prisoners tried before them. They were content with the correct discharge of what was understood to be their regular official duty. But he does a great deal more; and out of this excess of labour has sprung the kind of opposition which he has hitherto experienced in Hull. This has its origin, not in bad feeling, but in an excessive jealousy of any undue severity on his part. His great powers of personal observation enable him, by the exercise of a sort of prescience, to detect latent crime in the countenance of a prisoner, and thus he is sometimes prompted to address his warnings to the unacted vice before him, as well as to the small acted part revealed in the evidence. Those who have eyes, but see not, cannot comprehend this, and deem him at times rather sharp in his admonitions. But he is an excellent Judge, nevertheless, and requires only to be well supported by the magistracy to effect a wonderful reduction in the juvenile criminality of the borough. While, therefore, we thank Mr. Galloway for the explanation which he has given, we would suggest to him not to trouble himself much about idle rumours to the Recorder's prejudice. Mr. Warren is large enough to be the object of such attacks; and he possesses greatness enough in himself to be able to consign to utter nothingness myriads of those capable of making them."

INCORPORATED LAW SOCIETY.

INTRODUCTORY LECTURE OF MARTIN ARCHER SHEE, ESQ., BARRISTER-AT-LAW.

REFERRING to the previous part of this excellent Lecture (page 106, *ante*), we proceed to give a full report of the remainder. Mr. Shee thus proceeded:—

Connected with the first and most extensive function of equity; viz., the repression of moral, as contra-distinguished from legal fraud, we find the important and effective jurisdiction exercised by the Court, in the enforcement of the specific performance of agreements between parties contracting on the footing of pecuniary or valuable consideration,—and the no less formidable interference by injunction, whether in restraint of proceedings commenced or threatened to the irreparable or grievous injury of present or future rights,—or in arrest of the ordinary course of law in cases where its results would be opposed to good faith or conscience, or where the true interests of justice require a more searching investigation of facts than the machinery of the mere legal tribunals can effect.

The rules according to which the Court decrees the specific performance of agreements were obviously founded on the clearest and most distinctive principles of equity.

Whatever a man has deliberately and distinctly undertaken to do,—not by way of gratuitous bounty, but as the result or term of a fair negotiation with another person, involving mutuality of contract,—it was evident that he was in good faith and conscience, strictly bound to perform. It would be a mockery of justice to say, that when *A.* has solemnly contracted with *B.* for the sale to him of an estate, at a certain price, which both parties have agreed upon as its reasonable value,—either party should be at liberty to recede from his bargain, at any time previous to the completion of the transaction by the payment of the purchase-money on the one hand, and the legal conveyance of the land on the other. And the same observation held equally good with reference to every other variety of beneficial contract which remained *in fieri*, involving either absolutely or contingently, the performance of subsequent acts as a legitimate consequence of the agreement.

Undoubtedly, our system of law did not ignore these moral obligations, the existence of which was assumed in every action brought on a covenant in a deed. But apart from any question as to the formalities required to constitute an express legal covenant,—formalities in nowise distinguishable in principle, however they might be in degree, from the requisitions of the Statute of Frauds as to the signature of an agreement by or on behalf of the person against whom it was sought to be enforced,—a single glance at the nature of legal procedure on that point, will suffice to show how imperfect was

the remedy which the jurisdiction of the ordinary tribunal could supply. Take, for instance, the case of a covenant for farther assurance in a deed of conveyance of land, in fee simple,—where the further assurance required by the purchaser, and claimed under the covenant, would be necessary to his secure possession of the property; as it might be,—if some cloud on the inheritance,—affecting the title of the vendor at the date of the conveyance, had been removed by matter *ex post facto*, and invested him with an independent and paramount title to the fee of which he had purported to dispose. In the event of his refusal, when called upon, to execute a further and more complete assurance in pursuance of his covenant,—how is the purchaser to obtain full redress at law? If he sued the defaulting party on the covenant,—pecuniary damages, by way of compensation, according to the estimate of a jury,—for the injury sustained by its infraction, were all that was within his reach; while the wrongdoer, subject of course to the payment of damages and costs,—was at liberty, as far as the interference of mere law was concerned,—to convey the subject-matter of the covenant to another purchaser.

It would of course be understood, that this case was put merely by way of illustration, and not as a probable or ordinary combination of circumstances. Perhaps, in most cases of legal covenant on which actions were brought,—the receipt of pecuniary compensation might be a substantial and satisfactory remedy for the injury inflicted. But in the case which he had supposed, as in the vast majority of cases where a man had stipulated for the absolute possession of a specific thing, as for example,—an estate which he coveted as a residence, or valued on account of the local or territorial influence connected with its ownership,—the remedy by way of damages, might be to him a mockery. What he wanted was not a sum of money, to be taken as the measure of his loss or disappointment,—but *the estate itself*.

In such a case, law was powerless for his relief. But equity supplied the real and effective remedy, by constraining the vendor to carry out his agreement *modo et formâ*; i. e. to execute a valid conveyance of the estate, on receipt of the purchase-money agreed upon. In like manner, if it were the purchaser who sought to recede from his bargain, the Court exercised an equally effective control over him, by decreeing the payment of the money, in exchange for the tendered conveyance, previously taking care to ascertain that the vendor was in a position to confer a valid title to the interest which he had agreed to convey.

The perfect efficiency of the remedy in equity, in such cases, was the result of the formidable power vested in the Court, of enforcing obedience to its decrees and orders, by imprisonment of the refractory party, for an indefinite period,—of more or less duration in practice, according to the delay which might intervene before the delinquent purged his contempt by unqualified submission, and payment

of the costs incurred in vindicating the authority which he had rashly set at defiance. This, it must be remembered, was the distinctive *modus operandi* of the Court of Chancery in giving effect to its decrees and orders. Comparatively recent legislation had expressly given to the decrees of the Court, under certain restrictions and conditions,—the effect of judgments at law, for all purposes connected with the liability of real and personal property to answer pecuniary demands duly enforced against its owner; and, in such cases, the statutory remedy was cumulative. But the Court of Chancery, acting as such, proceeded *in personam*, treating every species of disobedience to its orders, or defiance of its authority, on the part of those who were properly subjected to its jurisdiction,—as a contempt of the Court, to be personally expiated by imprisonment. The process by which its authority was vindicated, was the same in spirit and principle, whether the offending party had eloped with a female ward of Court, refused to put in his answer to a Bill in Chancery, disobeyed an injunction restraining him from cutting down timber, or omitted to pay a specified sum of money within the period limited by a decree.

This power of committal for contempt was, no doubt, inherent in all the Superior Courts, both of Law and Equity. But it was a power, the exercise of which was rarely called for in reference to disputes relating to property, which were within the province of law, and liable to be decided by the verdict of a jury on matters of fact—the several writs of *fiat facias*, *capias ad satisfaciendum*, and *haberi facias* respectively obtainable, as of right, under a judgment, according to the nature of the case, being in general amply sufficient to vindicate the authority of the legal tribunals. But in equity, the power of committal, if not daily called into action, was essentially the *vis motrix* on which the whole machinery of the jurisdiction depended. It was no rusty or unwieldy weapon, slumbering in its scabbard, and rarely visible beneath the ponderous folds of the judicial ermine; but a bright, keen-edged, and easily brandished blade, held unsheathed with a firm and vigorous grasp, and ever and anon gleaming portentously in the eyes of all refractory suitors. With the sole exception of the sovereign, whose royal prerogative was, in an especial manner, represented by the jurisdiction of the Great Seal, there was no individual in the kingdom, however exalted his social or political station, who could with impunity set at defiance the order of the Court, or in any manner exhibit contempt for its authority.

Nor was this a merely theoretic view of the formidable power in question. The cases of Mr. Long Wellesley and Mr. Lechmere Charlton, are significant examples of the resolute and unflinching manner in which the majesty of the Court has been vindicated in practice,—not only against deliberate disobedience, but even against irreverent demeanour on the part of members of the Legislature who vainly sup-

posed that the senatorial privilege would suffice to shield them from the unpleasant consequences to which the common herd of mankind expose themselves, by braving the terrors of the seals and mace.

The principles upon which the Court acted when interfering by injunction, would naturally occupy a considerable share of attention at a subsequent stage of the inquiry. The nature and mode of that interference were not such as to demand any very elaborate illustration in that preliminary notice. As, in the matter of specific performance, the Court peremptorily constrained the defaulting party to do that which conscience and Equity dictated, so, where it saw manifest injustice about to be perpetrated under the mask or authority of law, or doubtful rights asserted in such a manner as to threaten irreparable damage, or occasion great practical injury, to the interests of the party who was adversely litigating those rights, it restrained with a strong hand the performance of the act, or the enforcement of the legal process by which the scales of justice were endangered in their strictest equilibrium. The variety of cases in which this restraining power of the Great Seal might be called into exercise, under divers imaginable combinations of circumstances, was so great as to baffle all attempt at precise classification.

The points on which he had touched were strictly illustrative of the nature of the jurisdiction, as it regarded the broad rule of Equity, respectively of the more technical parts of the system.

The Lecturer then passed on to a cursory view of the functions of the Court in the administration of trusts.

The whole subject-matter of trusts was, in an especial manner, and *ex vi termini*—so to speak—the legitimate province of Equity, as relating to the enforcement of duties attached to the legal possession of property in the hands of persons bound by conscientious obligation to hold or administer that property for the benefit of other parties. The nature of the subject, and its origin, as traceable in the writings of the civilians, not only served to mark the distinction between the office of the legal tribunal and the attributes of the *forum conscientie*, but suggested the idea of a conflict between the legal and the moral principle, not wholly dissimilar to that which appeared to have existed between the two jurisdictions in our own country, at the period when the Courts of Equity first assumed an active position in reference to this matter. The *fidei commissum* of the civil law must have been originally devised as a means—an irregular, circuitous, and uncertain means—of giving effect to dispositions of property either wholly prohibited, or imperfectly practicable by the strict rules of law.

"Sciendum est," says Justinian, *"omnia fidei commissum, primis temporibus, infirma fuisse; quia nemo invitatus cogebatur prestare id de quo*

rogatus erat: Quibus enim non poterant hereditatem vel legata relinquere, si relinquebant, fidei committebant eorum qui copere ex testamento poterant hereditatem, et ideo fidei commissum appellata sunt; quia nullo vinculo juris, sed tantum pudore eorum qui rogabantur, continebantur."—Inst. Lib. 2, tit. 23.

And it would seem that, among the Romans, the appeal *ad misericordiam*, addressed to the sovereign power in the case of the more flagrant abuse of the fiduciary possession which the Law ignored, first obtained the exceptional interposition of that paramount authority, in redressing the particular grievance, and ultimately led to the establishment of a permanent jurisdiction invested with functions strictly analogous to those of our Courts of Equity.

"Postea Divus Augustus primus semel iterumque, gratia personarum motus, vel quia per ipsius salutem rogatus quis diceretur, aut ob insignem quorundam perfidiam, jussit consilii auctoritatem suam interponere; quod quid justum videbatur, et populare erat, paulatim conversum est in assiduum jurisdictionem: tantumque eorum favor factus est, ut paulatim etiam prætor proprius crearetur, qui de fidei commissis jus diceret quem fidei-commissarium appellabant."—Just.

It was the received opinion, and indeed the history of our legislation supplied an important corroboration of the view, that the system of trusts among us owed its origin to the efforts made by or on behalf of the clergy, to evade the operation of the Laws of Mortmain, in restraining the alienation of lands in pious uses. The clergy, naturally unwilling that the benevolent intentions of devout laymen towards the Church should be disappointed in deference to what they, no doubt, considered a very barbarous, if not a very irreligious, enactment, were not slow to recommend to the intended benefactor the adoption of an expedient with which their own knowledge of the civil law had rendered them familiar; and the *fidei commissum*, however contemptuously regarded by the Courts of Law, soon found in the more indulgent, and perhaps more enlightened, judgment of a clerical Chancellor, a prompt and effective recognition.

The beneficial interest, so recognised and protected against the legal and fiduciary seisin, though in name a use, was strictly a trust according to our present understanding of that term; and although the Legislature, not easily baffled in their steady resolve to uphold the principle of the law restraining gifts in mortmain, succeeded in defeating the object of these pious *fidei commissum* by the Statute of 15 Rich. 2, c. 5, which declared all uses to be within the Statutes of Mortmain, and forfeitable like the lands themselves, the expedient which the clergy had thus fruitlessly suggested for the benefit of the Church, was resorted to with more permanent effect by the laity for purposes connected with the wants and arrangements of civil life. The feudal principle, indeed, as represented by the Common Law, and the exclusively territorial legislation by

which it was extended or modified, maintained with varying success a protracted struggle against the jurisdiction claimed and exercised by the Courts of Equity in the administration of uses. But the principle of a fiduciary possession, when once extensively applied to the temporal affairs and interests of society, was not destined to yield in the contest with the perversity of Parliament. When the Statute of the 27 Hen. 8, known as the Statute of Uses, attempted once more to prohibit the creation of fiduciary interests in land, by transferring the legal attributes of the seisin to the beneficial use declared in connexion with it, the sole practical effect of this enactment was to give greater plasticity to the legal limitations of an estate,—while the substitution or addition of a trust, simply appended to the use thus deprived of its original character, at once eluded the apparent stringency of the amended Law, and received the prompt recognition of a tribunal ever reluctant to circumscribe within the narrow bounds of technical prohibition the free action of principles in perfect harmony with moral and substantial justice.

From the date of the Statute of Uses, thus reduced to a *brutum fulmen* by the happy ingenuity of the conveyancing intellect, ever fertile in resources for facilitating the transfer and modification of all beneficial interests, Equity remained in undisputed possession of the field; and the system of trusts, extended and applied to every species of property to which the law could attach a right, or conscience append an obligation, was not less certain in its action, nor less definite in its details, than the fabric of the Common Law itself.

Of this system, the Courts of Equity had exclusive cognisance; and, as far as they were occupied in enforcing the rights derived under trusts expressly declared by documentary provision, the functions of the Great Seal, and its derivative tribunals, were closely analogous to those of the Common Law. *Æquitas sequitur legem*, was a maxim to be taken, no doubt in a restricted sense, as applicable to the vast range of objects within the compass and control of our equitable jurisdiction. But it was literally true, in most cases, in reference to the distribution and transmission of such beneficial interests in property as depend solely on Equity for their recognition. As, for example, where the devolution of an equitable estate, either expressed or implied, was regulated by the principle of inheritance, the laws of descent by which the right heir is to be ascertained, were the same that are applicable to the transmission of the legal interest or estate upon which the trust was engrafted. Thus, in the case of freeholds, the equitable fee followed the course of descent governing the legal inheritance; and, in the case of copyholds, the rule of customary heirship would, in like manner, designate the individual in whom the equitable inheritance was vested.

Again, in the case of personality, if it be the

subject of an equitable interest as distinguished from the legal possession,—that interest, on the death of the person in whom the absolute beneficial ownership was vested, would pass to his legal personal representatives in the same manner, and subject to the same liabilities, as a corresponding legal interest in personality, when not dissociated from the beneficial enjoyment.

This perhaps hardly required to be stated, as it involved little more than the proposition, of very obvious truth and easy apprehension, that equitable interests, according to their nature and degree, were subject to certain general laws regulating the descent, enjoyment, and transmission of property, so far as those laws were irrespective of mere technical or statutory forms, imposed on its strictly legal alienation. But this close analogy, even in its limited signification, did not hold good throughout; and the whole doctrine and system of Equity, in reference to that most remarkable and most salutary anomaly, the separate estate of married women, would afford satisfactory proof that, on some points, Equity, so far from following the Law, exhibited a very wide divergence from its course, and acted in direct opposition to its theory and practice. The history of this peculiar branch of our equitable system, from its first recognition down to its full development in recent times, was strikingly illustrative of the manner in which the Court had gradually worked out the true principles of its own jurisdiction through seeming difficulties created by a too close adherence to strictly legal rules, in dealing with a subject matter existing only in derogation of the maxims of Common Law.

As far as Equity was merely conversant with express trusts, its task was comparatively easy, and would seem to involve no nice or discriminating application of the principles of conscientious justice. It was in dealing with the subject of implied and constructive trusts, that the Court found a wide field of strictly equitable action, wherein to display its powers and assert its authority.

A very great proportion of the liabilities and obligations which equity was occupied in defining and enforcing, might fall within the category of constructive trusts; a term clearly applicable in every case where any species of property or beneficial interest appeared, on a full investigation of all the accompanying facts and circumstances,—to be so possessed by, or vested in one person that fair dealing and conscientious justice, irrespective of positive law, or express declaration, imposed on him the moral duty of transferring it to, or holding it for the benefit of another.

The enforcement of such duties was the province of equity; and the jurisdiction which it exercised in the administration of the estates of deceased persons, at the suit of creditors, legatees, or next of kin, as the case might be, although now resorted to as the machinery through which certain undisputed legal principles were most conveniently worked out,—undoubtedly

owed its origin, in remote times, to the peremptory and conscientious interference of the Royal Authority, as represented by the Great Seal, which, not perhaps without a contest, succeeded in impressing a strictly fiduciary character on that possession of a deceased person's goods by the ordinary or his nominees, which appeared to have been originally, to some extent, indefinite in its nature, and uncertain in its incidents.

In matters of account, the Courts of Equity have what was in theory, at least, a concurrent jurisdiction with Courts of Law. But the machinery of the former,—supplying by its system of evidence, however defective on some points, the more effectual means of sifting the details of complicated commercial or pecuniary transactions, had secured for the equitable tribunal so general a preference in practice, that its interference had almost assumed the character of an exclusive jurisdiction. The recent changes in the Law of Evidence, by the Statute 14 & 15 Vict. c. 99, which conferred on all Courts the power of examining the parties most interested in the points at issue,—a power which the Court of Equity had, *sub modo*, and to a limited extent, so long enjoyed, might possibly have the effect of recalling into active operation, the almost dormant functions of the Common Law on this point.

It was not the Lecturer's intention, and the limits of this merely preliminary discourse would not authorise him to undertake an accurate or systematic enumeration of the various classes of subject, however capable of generalization, to which the action of equity extended. He had attempted no more than a rapid glance at the main features and characteristics of the science, confining himself to such observations on its application by our Courts as appeared to him shortly and fairly illustrative of the spirit which animated it in theory,—and to the honour of our judicial system be it said,—had seldom failed to direct it in practice. Among many other points which he had omitted, and to which a more accurate outline of his subject would properly extend, he might mention the jurisdiction of the Court as exercised in the protection of the person and property of infants: and he referred to it now merely to note the distinction that it was not dependent on the general attributes or functions of the Court as the dispenser of equitable justice, but was derived from the more technical authority of the Great Seal,—representing the prerogative of the Sovereign as *parens patrie*, and claiming by an extended, though modified application of an ancient feudal principle, the guardianship of all infants. The authority possessed by the Court over the property of the infant, was not, as it had been sometimes alleged, the foundation of the right of control which it claimed over his person. It was more properly an incident of that right, and a necessary development of the duty which its possession involved. It was well settled, that the existence of property to which the infant might be entitled, was wholly unnecessary

to warrant the interference of the Court, wherever a due consideration of his moral or spiritual interests rendered it expedient to withdraw him from the custody of those, however nearly connected with him in blood, who might be guilty of abusing the sacred trust with which nature or law had invested them.

Before concluding, the Lecturer adverted to what was, he believed, not an uncommon error, in reference to a department of administrative justice sometimes supposed to be connected with the peculiar jurisdiction of the Court of Chancery. He meant the custody of the person, and protection of the estates of lunatics. This important and useful jurisdiction—strictly a branch of the prerogative—was not, like the custody of infants, a regular and permanent attribute of the Great Seal. The Lord Chancellor had no power, as such, to interfere with either the person or the property of those suffering under mental alienation, merely on the ground of their incapacity. The writ *de lunatico inquirendo* had, indeed, always been sued out under the great Seal, by virtue of what is technically described as its ordinary jurisdiction, as *officium brevis*. But the authority usually exercised over the person and property of the lunatic (when duly so found) by the Judge holding the Great Seal, was, derived, not from the custody of that significant emblem of the Royal Prerogative, but from a Special Commission granted by the Sovereign, and delegating that authority to the Chancellor for the time being in his individual capacity. Hence it was that, although the combined effect of recent legislation and the Royal Sign Manual had entrusted the exercise of the jurisdiction in Lunacy to the Lords Justices of Appeal in Chancery, concurrently with the Chancellor,—neither the Master of the Rolls nor any one of the Vice-Chancellors, however fully representing the power and functions of the Great Seal as the dispenser of Equity, could, as such, take any judicial cognizance of the matters pertaining to lunacy.

ADMISSION OF ATTORNEYS.

APPEAL FROM THE EXAMINERS.

By the Rules and Orders of the Superior Courts of Law and Equity, in case any Candidate shall be dissatisfied with the refusal of the Examiners to grant their Certificate, he shall be at liberty, within one month, to apply for admission by petition in writing to the Judges, which application shall be heard in Serjeants' Inn Hall, by not less than three of the Judges.

A petition of appeal was presented by one of the 23 Candidates who were rejected in Trinity Term last. The application was first heard on the 2nd instant, before Mr. Justice Coleridge, Mr. Justice Maule, and Mr. Justice Williams, and adjourned to the

7th instant, when Mr. Justice Coleridge, Mr. Justice Cresswell, and Mr. Justice Williams heard the appeal, and, having considered the Questions and Answers (copies of which had been laid before them), their Lordships dismissed the appeal.

It is upwards of 17 years since the Examination of Candidates for admission on the Roll of Attorneys and Solicitors was instituted. Nearly 400, on the average, are examined yearly, of whom 300 take out Certificates, making in all about 5,000 Practitioners who have been examined. This was the *third* appeal only.

The whole number of Attorneys in England and Wales is about 10,000. The number, during the last 10 years, has but slightly increased,—during the last two years, it has somewhat *decreased*.

The following are the precise numbers :—

From Trinity Term, 1836, to Michaelmas, 1842, both inclusive	2,742
Hilary, 1843, to Michaelmas, 1849, both inclusive	2,569
Hilary, 1850, to Michaelmas, 1853, both inclusive	1,498
	6,809

The proportion of the Candidates deferred is, on the whole, about 7 per cent. The average of the last four years is rather higher, being about 11 per cent. The following are the particulars of *Candidates deferred* :—

Trinity, 1836, to Michaelmas, 1842, both inclusive	110
Hilary, 1843, to Michaelmas, 1849, both inclusive	204
Hilary, 1850, to Michaelmas, 1853, both inclusive	169
	483

This number includes several Candidates who were rejected more than once.

NOTICES OF NEW BOOKS.

Commentaries on the Laws of England, in Four Books. By Sir WILLIAM BLACKSTONE, Knt., one of the Justices of his Majesty's Court of Common Pleas. The 23rd Edition, incorporating the alterations down to the present time. By JAMES STEWART, Esq., Barrister-at-Law. London: Stevens & Norton, 1854.

OUR readers are well aware of the new plan of editing our great Legal Classic, adopted by Mr. Serjeant Stephen and Mr. Stewart contemporaneously, several years

ago. The learned Editors appear to travel side by side, for each has arrived at a Third Edition of his labours. Mr. Stewart has preserved nearly the whole text of Blackstone,—putting in the past tense those parts of the Law which have been altered,—converting them into an historical form, and then setting forth the present state of the Law. Mr. Serjeant Stephen does not profess to give the entire work of Blackstone, but to make “*new Commentaries*,” quoting from Blackstone all that remains unaltered, and distinguishing the quotations by the brackets in which they are inclosed.

We incline to think that both these plans are preferable to the editions in which the original text is given as Blackstone wrote it, appending numerous and elaborate notes, to show the alterations effected or the repeal or amendment of the Law. Our ancient attachment to Blackstone, however, induces us to rejoice that we may still read the unrivalled original, and we should deem a library incomplete that did not contain the work, both in the original and the amended form. The student preparing for his examination, and pressed for time, will of course prefer that edition in which he may soonest find the actual state of the Law, without any more historical matter than may be essential to comprehend the existing enactments and rules.

In the Preface to this new edition, the Editor thus explains his views in adhering to his plan, adopted so long ago as the year 1837, and the progress of his labours from that time to the present :—

“I have now the satisfaction of presenting the Third Edition of the whole Four Books of the Commentaries of Mr. Justice Blackstone, edited on a plan which has found some favour with the Profession. Since the first edition appeared, I have had the pleasure of observing the publication of many other works taking the Commentaries of Blackstone as their foundation, and incorporating additional matter contributed by their Editors. Without in any way wishing to put forth for my own work any claim of originality, yet I may allude to these other publications as justifying my own attempt. One edition of the Commentaries at least, in which the old plan of leaving the text unaltered, and adding notes giving the changes in the law, with much new matter, has also been published within the same period; and there have been several other publications more or less derived from Blackstone, all of which I have not seen.

“Under these circumstances, I think I have some reason to congratulate myself that my work is still called for. I may be permitted to

say, that having thus had an opportunity of reconsidering my original plan, I am not disposed to make any alterations in it, whatever may be the faults of its execution. The numerous and important changes in the law since the last edition, made by statute and otherwise, I have endeavoured to notice.

"As the volumes of this work were published separately, it may be useful to give the dates of the several editions. That part of the second volume which relates to *Real Property* was first published in 1837. A second edition, including also the law relating to *Personal Property*, in 1840; and a third in 1844. The first volume was first published in 1839, and a second edition in 1849. The third volume was first published in 1841, and a second edition in 1844. The fourth was first published in 1841, and a second edition in 1844. I have endeavoured in this edition to bring down the whole law to the present time. As the second volume has been much used as a Student's book as well at the Universities as in the Inns of Court, and elsewhere, I have thought that it might be convenient to continue its separate publication, but I have in this edition, for the first time, endeavoured to make the statement of the whole body of law contained in the *Commentaries* uniform and simultaneous; and I have thought it might be useful to append a series of questions to each chapter.

"It is proper to observe that, throughout the work, the first book or volume is referred to as 'The Rights of Persons,' the second as 'Principles of the Law of Real and Personal Property,' the third as 'Private Wrongs,' and the fourth as 'Public Wrongs.'

"The marginal paging refers to the original paging of Blackstone.

"In the course of the preparation of this edition for the press, I have received much assistance from professional friends at the Bar, among whom I may mention Mr. *Arthur Sperling*, and Mr. *J. S. Cumming*, both of Lincoln's Inn, to whom I feel much indebted."

The alterations which have been made in the Law since the last edition, are stated with much judgment, conciseness, and accuracy; and the whole work well upholds the Author's reputation for skill and learning. The various steps taken in both branches of the Profession, to improve the system (if system it can be called) of legal education, has evidently induced Mr. Stewart to append to each chapter, without unnecessarily going into minute detail, such Questions as will test the recollection of the student as he proceeds, chapter by chapter; thus furnishing the ready means of mastering the principal points throughout the work. After an attentive perusal of a chapter, the Student should read question by question, turning back to the text, whenever his recollection fails, or he is in

any degree uncertain of a full and complete answer.

If this course be adopted, we shall expect next year that, wherever the Examination may take place,—whether in the Halls of the Inns of the Court, or the Hall of the Incorporated Law Society,—the student, aided by these works and others of similar excellence, will be enabled to answer the questions placed before him, in a well-expressed, careful, and complete manner,—avoiding unnecessary details, circumlocution, or conjecture. The practice, indeed, of writing a pithy answer to every one of these questions, will be a useful exercise, both to the student for the Bar and the articled clerk. For the purpose of an examination, the shorter the answer the better, provided it be complete.

The young lawyer of the present day has certainly many advantages over the lawyers of former times. He has the means of coming well prepared for the ordeal through which he has to pass, and if he diligently devotes a few hours daily during his pupilage of three or five years, he cannot fail to do credit to himself, and ultimately honour to his Profession.

By way of example, we select the questions framed on the 3rd section of the Introduction, containing a general description of the Laws of England:—

- "Page 59. Of what is the Municipal Law of England composed?
How is it usually divided?
- 60. Define and explain '*Jus non scriptum*'?
What is the Common Law of England?
Give Lord Bacon's opinion of the English law and language?
What was Alfred's Dome-book?
- 61. Is it now extant?
When did Alfred's code fall into disuse?
What were the three prevailing systems of Law in England in the 11th century?
Specify the districts in which each prevailed.
Give the origin of each system?
- 62. Who compiled them into a Digest?
What was the Code '*las partidas*'?
Who is styled '*Legum Anglicanarum Conditor*'?
Who '*Restitutor*'?
- 63. How is Blackstone's account of the history of the law now received?
- 64. Of what materials is the Common Law of England chiefly composed?
Specify and explain each part.
- 65. How is the validity of a custom determined?

- 65. What are precedents? How far do they bind?
- 66. Give instances in which they have not been followed?
- 68. From what period does the series of Reports run?
What were they first called, and by what authority were they taken?
When did the Reports cease to be published by the authority and at the expense of the Crown?
- 69. Mention in chronological order the names of the most esteemed of our ancient legal writers, with the names of their several treatises, giving some account of the more important.
- 70. State the origin and authority of custom under Republican and under Imperial Rome.
- 71. What are particular customs? Where does gavelkind prevail? In what is it peculiar?
What is Borough-English?
- 72. What is the '*Lex Mercatoria*'?
- 73. Is the practice of conveyancers binding?
State the points of proof of customs.
Name any exceptions to the first point.
- 74. Give the rules which regulate customs, in order, with examples of each.
What was, and what is the time of legal memory?
- 76. How are special customs construed? Give an instance.
What is the third division of our Common Law?
- 77. How do codes, such as the Civil and Canon Laws, come to be included in '*leges non scriptæ*'?
Whose example does Blackstone cite for such an arrangement?
- 78. How is the Civil Law subdivided; when, and by whom, was it so arranged?
Give an outline of its history.
- 79. Of what does the Canon Law consist?
- 80. Who compiled it, and when? Over whom is it binding, and by what authority?
- 81. In what Courts are the Civil and Canon Laws in use?
In what three ways are these Courts restrained?
- 82. What is the oldest part of the Statute Law?
- 83. Mention the kinds of Statute Law.
To what are they parallel in Roman Law?
How are Acts of Parliament now cited? How formerly?
- 84. What are declaratory and remedial, enlarging and restraining Statutes? Give examples of each.
- 85. Mention the rules for the con-

struction of Statutes, with examples.

- 87. When do Statutes begin to operate?
- 88. Can a prior bind a subsequent Parliament?
- 90. What Courts have power to construe Statutes?
How far does their power extend?

POINTS IN COMMON LAW PRACTICE.

ATTESTATION OF WARRANT OF ATTORNEY BY ATTORNEY ACTING FOR BOTH PARTIES.

THE plaintiff having agreed to lend the defendant 35*l.*, on his executing a warrant of attorney, the defendant went to the plaintiff's attorney, Mr. Slocombe, of Reading, with the plaintiff, in order to give instructions to have the warrant of attorney prepared. Mr. Slocombe was, however, not at home, but afterwards, on the defendant meeting him, they went together to the plaintiff's residence, and after the plaintiff and Mr. Slocombe had had some conversation in private, the defendant went to Mr. Slocombe's office. A warrant of attorney was then produced, and on the defendant, in answer to a question, whether he had any attorney, as it was necessary one should be present on his behalf when he signed, observing, Mr. Lamb had done some business for him, it appeared that Mr. Slocombe had said, he would do it for both. He then read over the contents of the warrant, and attested the defendant's execution as his attorney, but he was also described in the attestation as "the attorney for the plaintiff in this action."

A rule was made absolute to set aside the warrant of attorney, and *Cresswell, J.*, in his judgment observed:—"The question depends upon the sufficiency of the attendance of an attorney for the defendant, at the execution of the warrant of attorney, to satisfy the 9th sect. of the 1 & 2 Vict. c. 110.¹ * * * *

¹ Which provides, that "no warrant of attorney to confess judgment in any personal action, or *cognovit actionem*, given by any person, shall be of any force, unless there shall be present some attorney of one of the Superior Courts on behalf of such person, expressly named by him, and attending at his request, to inform him of the nature and effect of such warrant or *cognovit* before the same is executed; which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney."

I do not find anything in the Statute requiring the presence of an attorney for the person, to whom the warrant is given. But the same attorney cannot act on both sides. All the cases agree in that.² The question, therefore, in this case, is, whether Slocombe can be considered as having attended solely on the part of the defendant. I am of opinion that he certainly cannot. Upon the defendant's affidavit, I should assume that Slocombe attended as the plaintiff's attorney. But even taking the facts as they appear upon the plaintiff's affidavit, I should come to the same conclusion. I agree with Mr. Brown [the plaintiff's counsel], that we must deal with the matter as we would have done on the day after the execution of the warrant of attorney. But, in so doing, we may still look at the subsequent conduct of the parties. It appears that the defendant, being desirous of borrowing a sum of money from the plaintiff, the latter introduced him to Slocombe; that Slocombe afterwards conferred with the plaintiff, and then told the defendant he must give a warrant of attorney. Waiving all question as to the conversation alleged to have taken place at Slocombe's office, it appears that a memorandum and warrant of attorney were prepared by Slocombe; and I do not find any statement that the memorandum was ever handed over, nor does it appear in what capacity Slocombe held it. I do not mean to impute anything intentionally wrong to Slocombe: he meant, no doubt, to act correctly; but he has failed to do so. It may be that this Statute, which was designed to guard against fraud, may sometimes be turned into an engine of oppression, on the part of the defendant. Still he has a right to come to us and complain, that the provisions of the Act have not been duly complied with: I think there cannot be any moral doubt that Slocombe was acting for both parties; and this, upon all the decisions, is quite contrary to the spirit of the Act." *Cooper v. Grant*, 12 Com. B. 154.

SECURITY FOR COSTS.—FOREIGN SAILOR.

The plaintiff was a native of Philadelphia, in the United States of America, and was hired

by the defendant to serve as cook on board his vessel, and was paid off in London. On a motion for security for costs, the affidavit in support alleged that the plaintiff had no family connections in this country, nor any permanent residence, except a temporary lodging, and that he was likely to go to sea again.

Lord Campbell, C. J., in refusing the rule, said, that none of the authorities went beyond this, that "a foreigner being in England, but having his domicile out of the country, may be called upon for security. Here no such domicile is shown: the presumption must be, that the party will continue to reside where he is. To order security in such a case would be an impediment to justice which we are not authorised to allow." *Drummond v. Tilling* *hist* 16 Q. B. 740.

RECEIPTS ON POLICIES OF INSURANCE.

THE Solicitor to the Board of Inland Revenue, in answer to an inquiry from the solicitors of a life insurance company, "whether under the recent Act relating to the Penny Receipt Stamps it was necessary to have a stamp affixed to the receipt always indorsed on policies of insurance, and signed by the parties when the moneys secured by such policies were paid;" replied, that *no alteration was made in the law in that respect by the recent Act.*

We may presume that the same answer would be given with respect to Bonds and Mortgages. In fact, it seems that the amount of the receipt stamp, *when required*, is diminished, but the former law regarding cases in which no receipt stamp was required, remains unaltered.

NOTES OF THE WEEK.

LAW APPOINTMENTS.

THE Queen has been pleased to grant the place of one of the Lords of Session in Scotland to *Hercules James Robertson*, Esq., Advocate.—From the *London Gazette* of Dec. 9.

William Shaen, of No. 8, Bedford Row, London, Solicitor, to be a Commissioner to take affidavits within the United Kingdom of Great Britain and Ireland, to be used in the Supreme Court of Judicature of the Colony of Victoria.

² *Rising v. Dolphin*, 8 Dowl. P. C. 309; *Todd v. Gompertz*, 6 Dowl. P. C. 296; *Cocks v. Edwards*, 2 Dowl. N. S. 55; *Sanderson v. Westley*, 6 M. & W. 98; 8 Dowl. P. C. 412; *Pryor v. Swaine*, 2 D. & L. 37.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

Coram the Lord Chancellor and Lords Justices.)

Baily v. Evans and others. Dec. 6, 12, 1853.

SPECIFIC PERFORMANCE OF CONTRACT OF SALE UNDER POWER IN MORTGAGE.

On a mortgagee on an estate for 10,000*l.* proposing, in September, 1847, to exercise his power of sale, the defendants, who were sureties under a bond for 2,000*l.* collateral to the mortgage, agreed to purchase at a price sufficient to cover the amount due thereon, in the event of no sale having taken place at such price, and they entered into possession and continued until the present time: Held, dismissing with costs an appeal from Vice-Chancellor Stuart, that the mortgagee's representative was entitled to a decree for the specific performance of the contract, as the defendants had paid interest on the mortgage, although they disputed that they entered as purchasers.

This was an appeal from Vice-Chancellor Stuart, decreeing the specific performance of an agreement entered into by the defendants, the sureties under a bond for 2,000*l.*, collateral to the mortgage to a party, of whom the plaintiff was representative, for 10,000*l.*, on an estate at Butterford, Devonshire, at a price of 11,240*l.*, which was due thereon. It appeared that, on the plaintiff proceeding in September, 1847, to exercise his power of sale under the mortgage, the defendants had agreed to become the purchasers at a price sufficient to cover the balance due to him, in the event of his not having sold the estate at such price, and to complete the purchase at the following Christmas, and they entered into possession immediately, and continued in possession to the present time. The defendants afterwards repudiated the sale, and contended they had entered in possession under the mortgage and not under the alleged purchase, whereupon this bill was filed.

Malins and Roxburgh for the plaintiff; *Solicitor-General, Follett*, and *Prior* for the defendants.

The Court said, that as the defendants had retained possession as purchasers of the estate, and had paid interest on the purchase-money, whatever might be the character in which they had entered into possession, the appeal must be dismissed with costs.

Lord Chancellor.

Temple v. Ecclesiastical Commissioners of England. Dec. 10, 1853.

CHANCELLOR OF PALATINE OF DURHAM.—FEE ON HOLDING COURT.

Held, on special case upon construction of the 6 Wm. 4, c. 19, s. 6, transferring the jurisdiction in the Crown, and of the 6 & 7 Wm. 4, c. 77, vesting the balance of re-

venue of the bishopric in the Ecclesiastical Commissioners of England, that the Chancellor of the Palatinate was entitled to a fee of 100*l.* for each court he held, and which had been paid since 1788.

FROM this special case for the opinion of the Court, it appeared that the plaintiff had been appointed in 1851 Chancellor of the County Palatine of Durham by patent for life, and that certain fees, amounting to 27*l.* 7*s.* 4*d.* per annum, had been paid in respect of such office from the time of Hen. 8, and that in 1788, a fee of 100*l.* had been also paid by the receiver-general of the bishop for each sitting of the Court, in addition to such ancient fees, down to the year 1836, when the jurisdiction of the palatinate became vested in the Crown under the 6 Wm. 4, c. 19. By s. 6 of this Act, it was provided, that "nothing in this Act contained shall affect the right of any person holding a patent of any office, whether abolished by this Act or not, to receive any fee or stipend granted by such patent out of the revenues of the bishoprick of Durham; and that such revenues shall continue and be subject to all the same fees and stipends, in respect of any office in the said county of Durham, as the same have been heretofore subject to." And by the 6 & 7 Wm. 4, c. 77, the balance of the revenues of the see, after deducting 8,000*l.* for the bishop, was to be paid to the defendants. Since 1836, the fee of 100*l.* had been discontinued, and the question was, whether the plaintiff was still entitled to such fee. It also appeared the sitting of the Court took place on the average only once in the year.

The *Solicitor-General* and *Wickens* for the plaintiff, citing *Re v. Corporation of Bridgewater*, 6 A. & E. 339; *Regina v. Corporation of Norwich*, 8 A. & E. 633; *Regina v. Corporation of Carmarthen*, 11 A. & E. 9.

Bacon and *Fleming* for the defendants, referred to *Sir John Trelacney v. Bishop of Winchester*, 1 Burr. 219; 1 Ld. Ken. 256.

The Lord Chancellor said, the object of the Statute was to transfer to the Crown the temporal jurisdiction of the palatinate with an obligation to provide, as the bishop had done, for the holding of the Courts, and it charged the surplus revenues with the payment of the "stipends" of the palatinate officers, and which included, not only such as were recoverable at law, but those which the bishop was accustomed to pay. The object of the lord of the palatinate in first giving the fee of 100*l.* to the Chancellor, was to induce eminent men to accept the office, and its effect was manifest from the celebrated men who had held the office,—namely, Lord Eldon, Lord Redesdale, Lord Manners, Sir S. Romilly, Robert Hopper Williamson, Esq., Sir Charles Wetherell, and Sir Richard Kindersley. This object would be lost if the inducement were withdrawn, and it must be concluded the Legislature intended all

stipends which had been *de facto* paid should be continued, although they might not be recoverable at law. And as to there being no limit in the holdings of the Court, no abuse had taken place since the year 1788, and this Court would doubtless release the defendants if any improper holdings should afterwards take place, and the fee would therefore be declared payable by the defendants for each sitting of the Court.

Lords Justices.

Patching v. Dubbins. Dec. 7, 8, 1853.

COVENANT AGAINST BUILDING OPPOSITE PLAINTIFF'S HOUSE.—CONSTRUCTION.—INJUNCTION.

Under a covenant on the sale of a house, no building whatever, except monuments and tombs, were at any time to be erected on any part of the land belonging to the defendant lying on the east side of the terrace in which was the plaintiff's house, "and opposite" to the plot of ground belonging to the plaintiff: Held, dismissing, without costs, an appeal from Vice-Chancellor Wood, refusing, with costs, an injunction that the word "opposite" meant immediately opposite the plaintiff's house.

This was an appeal from the decision of Vice-Chancellor Wood (reported *ante*, p. 35), refusing an injunction to restrain the erection of a building on a plot of ground opposite the plaintiff's house. It appeared that on the purchase of the house No. 7, Windsor Terrace, Brighton, from the defendant in 1830, the defendant had covenanted that no building whatever, except monuments and tombs, should at any time be erected on any part of the land belonging to him lying on the east side of the terrace, and opposite to the plot of land belonging to the plaintiff.

Rolt and C. Marett in support.

The Lords Justices (without calling on Bacon and *W. Histop Clarke*, *contra*) said, the words "and opposite" in the covenant must mean immediately opposite, as they could not mean only the same as the former words, and the bill was therefore properly dismissed—but without costs of appeal.

In re Feargus O'Connor. Dec. 10, 1853.

LAND ALLOTMENT COMPANY.—EXECUTION OF CONVEYANCES BY OFFICIAL MANAGER.—LUNATIC.

The official manager of a land allotment company, which had been ordered to be wound up, was directed to execute the conveyances to the allottees, who were in humble circumstances, in order to save expense, in the place and behalf of a lunatic, in whom the legal estate was vested.

This was a petition, headed in Lunacy and in Chancery, under the Trustee Act, 1850 (13 & 14 Vict. c. 60), and in the matter of the Na-

tional Land Company's Dissolution Act, and the Winding-up Acts, 1848 and 1849 (11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108), for an order, that the conveyances of the several allotments of the estate at Rickmansworth, Hertfordshire, to the allottees of the same might be executed by the official manager, on behalf of Mr. O'Connor, who had been found lunatic. It appeared a petition had been presented to Vice-Chancellor Wood in the matter of the lunacy, but that the order had been refused.

Roxburgh in support, on the ground the allottees were in humble circumstances of life, and that it would save the expense of the perusal and execution by the official manager of each conveyance.

W. Forster for the committee.

The Lords Justices said, that an order would be made under sect. 9 of the Act dissolving the company, on the official manager to execute in the name and on behalf of the lunatic—the conveyances to be settled by the Master, and the money paid to be subject to the same lien of the lunatic as the estate would have been—the costs of all parties, both in this Court and in the Court below to come out of the estate of the company.

Patrick v. Edwards. Dec. 10, 1853.

ALTERATION OF ROLLS' ORDER FOR PAYMENT INTO COURT BY TRUSTEE, AFTERWARDS OF UNSOUND MIND.

An order of the Master of the Rolls, for the payment into Court of a fund by a trustee had been altered on the trustee becoming of unsound mind, by substituting a person in his stead. A direction was inserted in the order for the fund, when paid in, to be subject to the decree in the Court below.

In this case it appeared that an order had been made by the Master of the Rolls on a trustee, to pay a fund into Court for division among the parties interested, but that their lordships had ordered such payment to be made by another person in his stead, the trustee being of unsound mind, but not so found by inquisition.

F. Webb now applied in respect of such order, the Accountant-General being of opinion such payment under the latter order would not be under the decree in the cause, and could not therefore be so dealt with.

The Lords Justices said, an addition would be made to their former order directing the money to be subject to the decree of the Court below.

Master of the Rolls.

Scurrah v. Scurrah and others. Nov. 1853.

LEASEHOLDS DEVISED IN UNDIVIDED THIRD PARTS.—REPAIRS, ADVANCE FOR.—COSTS OF MORTGAGEE.

Where a sum of money had been advanced for repairs of certain leasehold property, which

was devised in three undivided parts to the plaintiff, his sister, and the children of the deceased sister, to the sister who had administered with the plaintiff, but on a mortgage of her share and that of one of the children of the deceased sister: Held, that the mortgagee was not entitled to have his costs of appearing in a suit to charge the property with such advance, paid out of the estate, but that such costs must be added to his security.

It appeared that the testator gave one undivided third part in two leasehold houses to the plaintiff, another undivided third part to his sister, Sarah, and the other undivided third part to the two children of a deceased sister. The plaintiff, and his sister, Sarah, had administered *de bonis non*, and the latter had, upon certain repairs becoming necessary, obtained the requisite sum to be advanced by the defendant, Mr. Tanswell, on a mortgage of her own third share and of her niece's interest in the other third share. On this claim, it appeared the whole amount had been allowed as a charge on the estate, with the exception of a small sum—the plaintiff having refused to contribute, and a question now arose as to the mortgagee's costs of appearing.

C. Chapman Barber for the plaintiff; Glasse and Bovill for the defendant; S. Cracknall for the mortgagee.

The Master of the Rolls said, that as the money had not been advanced by the mortgagees to the defendant as administratrix, but on the private security, his costs could not be allowed out of the estate, but must be added to his security.

Wigston v. Griffith. Dec. 1, 1853.

SALE UNDER DECREE.—DEATH OF PURCHASER BEFORE CONVEYANCE.—SUBSTITUTION OF NEW PURCHASER.

Certain property was sold under a decree, but the purchaser died before the conveyance was executed, and his trustees sold to B. An application was granted to substitute B.'s name as purchaser.

THIS was an application for the substitution of the name of Mr. Blakesley as purchaser of certain property under the decree made in this cause in December, 1844, in the place of Mr. Palmer, who had died before the conveyance was executed, and his trustees had afterwards sold the property to the present applicant.

Bird in support.

The Master of the Rolls granted the application.

Hunt v. Penrice. Nov. 5; Dec. 2, 1853.

DEVISE OVER IN DEFAULT OF ISSUE.—CLAIM OF ALLEGED CHILD.—ANSWER TO ALLEGATIONS OF BILL.

Certain property was devised to the testator's daughter for life, with remainder to her children living at her death, and there was

a devise over in the event of her dying without issue to her heirs generally: Held, that the defendant, who claimed as her son, and who was alleged to be only an adopted child, was bound to answer the allegations in the bill as well as plead thereto, and the plea was directed to stand for an answer, with liberty to the plaintiffs to except.

CERTAIN property was devised in trust for the testator's daughter for life, with remainder to her children living at her death, and there was a gift over to the testator's heirs generally in default. The daughter married a Mr. Campbell, but died after her husband, and, as was alleged, without issue, whereupon the plaintiffs filed this bill claiming the property, and the defendant, who claimed as the only son of the deceased, pleaded thereto.

Roswell and Piggott, for the plaintiffs, urged that the defendant should answer as well as plead to the bill, which contended the defendant was only an adopted son.

R. Palmer for the defendant, contra.

Cur. ad. vult.

The Master of the Rolls said, the defendant was bound to answer the allegations in the bill as well as plead thereto, according to *Jones v. Davis*, 16 Ves. 262, but that the plea might stand for an answer, with liberty to the plaintiffs to take exceptions.

Vice-Chancellor Kindersley.

Footner v. Cowper. Nov. 9, 1853.

WILL.—CONSTRUCTION.—“PROPERTY.”—MOTION FOR DECREE.

Held, on motion for decree, under the 15 & 16 Vict. c. 86, s. 15, in a suit as to the construction of a will, that the testator's children were entitled in remainder in fee on the determination of the widow's life estate in the real as well as the personal estate.

THIS was a motion for a decree, under the 15 & 16 Vict. c. 86, s. 15. It appeared that the testator, by his will, gave to his wife all those his three cottage houses or tenements, gardens, orchards, hereditaments, and premises, with all the appurtenances thereto belonging, together with all his household goods and chattels, moneys, credits, property, and effects of every sort and kind whatsoever or whosoever, and after her death, all the aforesaid houses, tenements, gardens, orchards, and appurtenances, with all moneys, rights, credits, household furniture, and all property whatever between all his children, and he also directed that the widow of his late son Robert, should have an equal part or share between her and her children, the same as if his son were then living. A question arose whether the children, on the death of the widow, took an absolute interest in the real as well as personal estate.

E. Smith for the plaintiffs; Follett for the heir-at-law.

The Vice-Chancellor said, it was clear the

testator intended to give all his estate and interest in the property to his wife for life, with remainder in fee to his children and his son's widow and children, and a decree was made accordingly.

Vice-Chancellor Stuart.

Hope and another v. Threlfall. Nov. 3, 1853.

LEAVE TO READ AT HEARING AFFIDAVIT SWORN AFTER EVIDENCE CLOSED.—SPECIAL CIRCUMSTANCES.

Leave was granted to the plaintiffs to read at the hearing an affidavit sworn after the expiration of the period for closing the evidence, where copies of the defendants' affidavits had been only obtained when the cause was in the paper for hearing and three days before the hearing—with liberty to the defendants to cross-examine.

THIS was an application under the 15 & 16 Vict. c. 86, s. 38, for leave to the plaintiffs to read at the hearing of this cause an affidavit which had been sworn after the period fixed for closing the evidence had expired. It appeared that the plaintiffs had only obtained copies of the defendants' affidavits on the day the cause was down for hearing and three days before it was called on, and that the cause had been directed to stand over on that ground until this Term, but the chief clerk had dismissed a summons to extend the time for closing the evidence, and an appeal from his decision was impracticable as the Vacation Judge had left town.

Daniel and M. Archer Shee in support; *Bacon and J. J. Hamilton Humphreys*, contra; *Malins and Osborne* for the trustees.

The Vice-Chancellor said, as there had been no improper delay on the part of the plaintiffs, and, under the special circumstance, leave would be given as asked, but the right to cross-examine would be reserved to the defendants.

Attorney-General v. Alford. Dec. 2, 1853.

INFORMATION.—CHARITY.—PAYMENT INTO COURT BY EXECUTOR OF RESIDUE.—TRANSFER TO PARTICULAR ACCOUNT.

On making the common decree for an account and to settle a scheme, in an information against the executor of a testator who had directed the residue of his personal estate to be applied for the relief of persons suffering from accidental misfortunes, an order was made for the transfer of the fund which had been paid into Court under the 10 & 11 Vict. c. 96, by the executor to an account "in the matter of the trusts of the will," to the "charity account of the residuary personal estate."

THIS was an information for an account of the personal estate and effects of a testator, who had directed his executor, the defendant, to pay and apply the residue of his personal

estate and effects to the relief of such persons resident within the parish of St. Edmund, New Sarum, as might be sufferers from accidental losses or misfortunes, and not occasioned in any way by imprudence or misconduct, in such portions as the cases might deserve, with the joint consent and approbation of the rector and churchwardens for the time being of the parish. The defendant had paid the residue into Court, under the Trustees' Relief Act, 10 & 11 Vict. c. 96, to an account "in the matter of the Trusts of the Will of the Rev. James Cutler." The information also sought the settlement of a scheme, and the rector and churchwardens asked by petition to transfer the fund to an account entitled "Cutler's Charity Account of the Residuary Personal Estate."

Bacon and Surrage for the rector and churchwardens; *Malins and G. M. Giffard* for the defendant; *Wickens* for the Attorney-General.

The Vice-Chancellor said, the common decree would go for an account and to settle a scheme, and directed a transfer of the fund as prayed.

Chamberlain v. Chamberlain. Dec. 12, 1853.

PETITION FOR SETTLEMENT OF PART OF FUND TO WHICH MARRIED WOMAN ENTITLED.—REFERENCE TO CHAMBERS.

On a petition for the settlement of 300l., part of a fund to which a married woman was entitled, the matter was referred to chambers, in order to save the expense of having the settlement settled by conveyancing counsel, for the purpose of inserting in the order the trusts to which the sum was to be held.

THIS was a petition for the settlement, as the Court might direct, of 300l. 3 per cent. Consols, part of a fund to which the plaintiff was entitled. It appeared that the plaintiff had married Mr. Henry Beaumont while both were minors, and that she was entitled to two sums of 394l. odd, 3 per cent. Consols, and about 90l. 3½ per cents. and that the funds had been carried to an account to be settled as the Court should direct. The petition also sought the payment of the residue to the husband, and it appeared there was a child of the marriage.

Fooks in support.

The Vice-Chancellor said, that to have the settlement prepared and settled by the conveyancing counsel, under the 15 & 16 Vict. c. 80, s. 40, would be to incur an expense which would be improper, when so small a sum was to be settled, and the petition would therefore be adjourned to Chambers for consideration, for the purpose of inserting in the order to be made on the petition the trusts on which the sum was to be held.

Vice-Chancellor Wood.

Evans v. Jones. Nov. 9, 1853.

DISENTAILING DEED.—MISTAKE AS TO RIGHTS.—CONSIDERATION.

By a deed, in which the tenant for life and his

son, the tenant in tail, joined, a term of 500 years was created to secure a debt, with remainder to the mortgagor for life, with remainder to the son in fee. It appeared that, in respect of one of the estates included in this deed, the father was tenant in tail in possession, and not, as was supposed, only tenant for life: Held, nevertheless, that the joining of the son to bar the entail in the other estate was a good consideration, and the words being large enough, that the entail of the other estate was also barred.

It appeared that on the marriage of Mr. Benjamin Evans, in 1813, two estates were conveyed by his father in trust for himself for life, then to the son for life, with remainder to the intended wife, with remainder to the use of their first son and the heirs of the body of such first son. Mr. B. Evans having mortgaged his interest for 1,400l., and the mortgagee's heir-at-law and executor having called in the amount due, Mr. Evans had applied to Jane M. Jones to advance the same, and a disentailing deed was executed in September, 1843, under the 3 & 4 Wm. 4, c. 74. By this deed, after reciting the settlement, and that Benjamin G. Evans was eldest son and heir, and as such entitled to an estate tail in remainder immediately expectant on the death of Mr. Evans, and that Jane M. Jones had agreed to make the advance required in consideration of such son joining in the deed, which he had accordingly agreed to do, it was witnessed that in order to defeat and destroy all estates tail of the son in the property, and in order to convey and assure the inheritance in fee simple in the same, Mr. Evans and his son, in pursuance of the provisions contained in the 3 & 4 Wm. 4, c. 74, granted, released, and confirmed the hereditaments in question and the reversion, &c., and all the estate, &c., in trust to Jane M. Jones, her executors, &c., for 500 years, with remainder to Mr. Evans for life, with remainder to his son Benjamin G. Evans in fee, but subject to the usual proviso for redemption, on payment of the amount thereby secured, with interest.

It appeared that Mr. Evans was tenant in tail in possession of one of the estates under his grandfather's will, and not tenant for life only, and this suit was instituted by the widow of Benjamin G. Evans, who died without issue in 1845, claiming to be entitled under her marriage settlement to a life estate in the property included in the disentailing deed of 1843, on the death of Mr. Evans in 1849, and seeking to redeem, and for the hereditaments to be delivered up to her by the mortgagee and George D. Evans, who claimed as tenant in tail of one estate under the will of Mr. Evans's grandfather.

Bacon and Southgate for the plaintiffs; *Campbell and Dickinson* for the defendant G. D. Evans; *Rolt and Pitman* for other parties.

The Vice-Chancellor said, that as this was the case of a purchaser for valuable considera-

tion, and the son had joined in the disentailing deed in consideration of his having a fee simple limited to him instead of an estate tail, and the words were large enough to include the estate tail in the other estate, neither Mr. Evans nor those claiming under him could be heard to say such entail was not barred, and the usual decree must therefore be made.

Phillips v. Phillips. Nov. 10, 1853.

TRUSTEES.—POWER OF ADVANCEMENT.—SETTING UP LEGATEE'S HUSBAND IN BUSINESS.

The trustees of a will were empowered to advance not more than 1,000l., in their discretion, for the purpose of putting out or placing a legatee in any trade, business, profession, or employment, or otherwise, or for her preferment or advancement in the world. An order was made, on petition, authorising the payment of that sum to her husband who contributed an equal amount in order to commence business on his own account.

THIS was a petition on behalf of Mr. Wm. Cooper and his wife, who was entitled to one-third part of 10,000l. for her separate use for life without power of anticipation, and after her decease for her child or children, seeking the advance of a sum of 1,000l., in order to establish him as a shawl warehouseman in partnership with two other persons, in pursuance of a provision of the will empowering the trustees to advance and apply from time to time any sum of money out of the trust fund in their discretion, for the purpose of putting or placing her niece in any trade, business, profession, or employment, or otherwise, or for her preferment or advancement in the world. It also appeared that the petitioner had saved 1,000l., and had been employed for 13 years as chief clerk in a shawl warehouse. The fund had been paid into Court and carried to a separate account.

Bagshawe in support; *Daniel* for other parties.

The Vice-Chancellor said, the order would be made as prayed, on the petitioner effecting an insurance for 1,000l. on his life in the names of the two trustees appointed to receive the fund, and entering into a bond to the trustees to secure the payment by him of the future premiums,—such policy, and any moneys to be paid thereon, to be held on the trusts of the legacy.

Hughes v. Williams. Nov. 11, 1853.

REDEMPTION SUIT.—APPOINTMENT TO RECEIVE MORTGAGE DEBT.—NEW APPOINTMENT.

Where, in a redemption suit, the defendant had not attended, by mistake, the appointment to receive his mortgage debt, a new appointment was made on motion with notice, for

payment at the expiration of 10 days, but without any subsequent interest.

In this redemption suit it appeared that the defendant had not attended, by mistake, to receive the amount due on his mortgage, in accordance with the appointment made by the Master, and this motion was thereupon made, on notice, for a new appointment.

Pitman in support.

The *Vice-Chancellor* said, another appointment would, under the circumstances, be made, for payment at the expiration of 10 days, instead of the defendant's waiting six months, but that he was not entitled to any subsequent interest.

Lumley v. Hughes. Dec. 7, 1853.

SECURITY FOR COSTS.—MISDESCRIPTION OF ADDRESS IN BILL.

The plaintiff was described as of her Majesty's Theatre or Opera House in the liberty of Westminster, in the County of Middlesex, and he was so described in deeds by the defendant. It appeared he occupied a house in the same block of buildings in connexion with the Opera House, where he had never resided: a motion for security for costs was refused, but without costs.

Rolt and Freeling appeared in support of this motion, for the plaintiff to give security for costs in this suit, on the ground he had described himself as "of her Majesty's Theatre or Opera House, in the liberty of Westminster, in the county of Middlesex," whereas it appeared it had been stated to applications made there, that the plaintiff did not reside and had never resided there.

James and C. M. Roupell, contra, on the ground the plaintiff had been thus described by the defendant in the various deeds, &c., executed by the former, and that he in fact occupied a house in the same block of buildings, and used it in connexion with the Opera House, citing *Hurst v. Padwick*, 17 Law J., N. S., Ch., 169.

The *Vice-Chancellor* said, that in accordance with the case cited, the motion must be refused, but without costs.

Court of Queen's Bench.

Browne v. France. Nov. 11, 1853.

PROMISSORY NOTE.—ACTION ON.—REFERENCE IN NOTE TO AGREEMENT.

A promissory note for 100l. was made payable, with interest at 5 per cent., "as set out and specified in the agreement herewith." The agreement provided for the return of the money if a lease of the mining company, in respect of which it was given, were not obtained within three months: Held, on demurrer to a plea, that the plaintiff was not entitled to recover in an action as on a promissory note payable on demand.

This was an action on a promissory note for 100l. payable on demand; against the drawer,

to which the defendant in his plea set out the note and a contemporaneous agreement, whereby the sum so advanced was agreed to be repaid, with interest, in the event that a lease of certain mining property could not be obtained within four months by the defendant. It appeared that the note was as follows:—"15 June, 1852. I promise to pay to J. Browne, Esq., 100l., with interest at 5 per cent., value received, as set out and specified in the agreement herewith." To this plea there was a demurrer.

Gray, for the plaintiff, in support.

The *Court* (without calling on *Power* for the defendant, contra) said, the note referred to the agreement, which showed that the parties did not intend it to be payable on demand, and as the declaration was on a note payable on demand, the defendant was entitled to judgment.

Stapleton v. Clough and another. Nov. 17, 1853.

EVIDENCE OF SERVICE OF NOTICE TO QUIT IN ACTION TO RECOVER POSSESSION OF PREMISES.—DECLARATION OF DECEASED PERSON.

Evidence was admitted on the trial of an action to recover possession of certain premises, of the declaration of the party who had served the notice to quit, of such service on the defendant, although it appeared he had indorsed on the duplicate notice a memorandum of the service on the defendant's son: Held, that as the declaration was not made in the course of the person's duty, it could not be received.

A RULE nisi had been obtained to set aside the verdict for the plaintiff and for a new trial in this action, which was to recover possession of certain premises. It appeared on the trial before *Wightman, J.*, at the last Yorkshire Assizes, that one Jackson had served the notice to quit on the defendant's son, Robert Clough, having indorsed on the duplicate notice a memorandum of such service. Jackson had since died, and evidence was admitted of his statement afterwards (and which was the fact) that he had delivered the notice to quit on the defendant, who was tenant from year to year of the premises in question.

Knowles and Cross showed cause.

The *Court* (without calling on *Atherton* in support) said, that as the subsequent declaration was not made in the discharge of his duty, which was to indorse the service on the duplicate, it was in accordance with *Doe d. Patteshall v. Turford*, 3 B. & Ad. 890, inadmissible, and the rule was accordingly made absolute.

Court of Common Pleas.

Law v. Blackburne. Nov. 24, 1853.

ACTION ON AWARD.—PLEA OF INVALIDITY.—UNPROFESSIONAL ARBITRATOR.

Where an unprofessional man was appointed

arbitrator in an action of ejectment by Judge's order, and the costs of the action, and of the reference and award, were to abide the event, and he had directed the verdict to be entered for the lessors of the plaintiff: Held, that although he had no power to do so, it was clear he meant the lessors of the plaintiff were entitled, and that an action would lie on his award to recover the costs.

THIS was an action on an award to recover the amount of taxed costs in an action of ejectment and of a reference and award, to which the defendant pleaded that the award was bad, inasmuch as the arbitrator had directed the verdict to be entered for the lessors of the plaintiff. To this plea the plaintiffs demurred. It appeared that the action of ejectment had been referred to a land surveyor under a Judge's order, and that the costs of the cause and of the reference and award were directed to abide the event.

Norman for the plaintiff, in support of the demurrer; Field for the defendant, contra.

The Court said, that in effect the arbitrator, who was an unprofessional man, meant the lessors of the plaintiff were entitled, when he directed (which he could not do) the verdict to be entered for them, and that the plaintiffs were therefore entitled to recover.

Court of Exchequer.

Arnold v. Bainbridge. Nov. 5, 1853.

ACTION ON AWARD.—RIGHT OF DEFENDANT TO SET-OFF JOINT DEBT.

Held, that the defendant was not entitled to set-off against a debt due to the plaintiff alone under an award, a debt due from the plaintiff jointly with other persons.

THIS was a motion to set aside the verdict for the plaintiff and for a new trial in this action on an award, and to which the defendant pleaded a set-off in the usual form, and the plaintiff replied *nil debet* thereto. It appeared on the trial before Wightman, J., at the last Liverpool Assizes, that the debt sought to be set-off was due from the plaintiff jointly with other persons, whereupon the plaintiff obtained a verdict.

Knowles in support.

The Court said, that a debt to be made the subject of set-off, must be mutual and due in the same right, which was not the case here, and the motion must therefore be refused.

Noakes and another v. Thompson. Dec. 23, 1853.

ACTION ON I O U GIVEN IN PURSUANCE OF VERBAL UNDERTAKING TO PAY DEBT OF ANOTHER.—CONSIDERATION.—STATUTE OF FRAUDS.

In an action on an I O U, it appeared it had been given in pursuance of a verbal undertaking, in discharge of a debt due from H.

to the plaintiffs, and in consideration of their giving up their lien on certain leases to the defendant, who had purchased from H., but they arranged they should have a charge on one of the leases to the amount of their claim against H.: Held, that there was no consideration for the I O U, which was an insufficient guarantee under the Statute of Frauds, and that the plaintiffs could not recover thereon.

THIS was an action on an I O U, for 70*l.*, given by the defendant to the plaintiffs, who were attorneys, in discharge of a debt due from one Hoare, a builder, for their charges in preparing certain leases and for money lent. It appeared the I O U had been given in pursuance of a verbal undertaking in consideration of the plaintiffs completing and giving up the leases in question, on which they claimed a lien, and it was also further arranged that they should have a charge on one of the houses to the amount of their claim against Hoare, from whom the defendant had purchased. On the trial before Pollock, L. C. B., at the last Norfolk Assizes, the plaintiff obtained a verdict, subject to this rule to reduce the damages, whereupon this rule had been obtained.

Bramwell and Dawson showed cause.

The Court (without calling on Chancellor, S. L., and Henniker in support) said, that as the I O U was only *prima facie* evidence of an account stated, and did not import any consideration, and in the present case there was none by the extinguishment of Hoare's debt, and it was not valid as a guarantee under the Statute of Frauds, it could not be enforced, and the rule must be made absolute to reduce the damages.

Court of Criminal Appeal.

Regina v. Luckhurst. Nov. 26, 1853.

INDICTMENT.—INADMISSIBILITY OF EVIDENCE OF CONFESSION MADE UNDER THREAT.

Held, that the confession of a prisoner was inadmissible in evidence, which had been made in consequence of the witness saying, "If you don't tell me, I will give you in charge to the police till you do tell me;" and the conviction was quashed.

ON this indictment before Cresswell, J., at the last Maidstone Assizes, it appeared that evidence had been received of the prisoner's confession to one Willard, who had gone to the prisoner and said, "If you don't tell me, I will give you in charge to the police till you do tell me." The question as to the admissibility of the evidence had been reserved on the prisoner's being found guilty.

The Court said, that as the confession was made under a threat, it could not be received; and the conviction was accordingly quashed.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, DECEMBER 24, 1853.  
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REPRESENTATION IN PARLIAMENT.

MEMBERS FOR THE INNS OF COURT AND CHANCERY.

THE importance to the Legal Profession of direct representation in Parliament begins to be correctly appreciated as the subject is more discussed and better understood; and nothing has yet been suggested to diminish the confidence entertained, that a movement confined to this object, and conducted with energy and discretion, would be successful.

The events which have startled and occupied the political world during the last week,—the retirement of Lord Palmerston, and the selection of his successor,—cannot be supposed unfavourably to affect the issue of what we may be excused for describing as *the lawyers' question*. Without giving implicit credence to the statement, that the only subject upon which the late Home Secretary differed from his colleagues in the Cabinet was the proposed Reform Bill, there is abundant ground for believing that differences of opinion upon the extent of the changes it was expedient to introduce in the representative system, led to the resignation of Lord Palmerston.

Without professing to have any acquaintance with his lordship's sentiments upon any subject on which they have not been publicly declared, we may at least conjecture that the provision said to be contained in the new Reform Bill, by which the elective franchise is proposed to be granted to the graduates of all the Universities, and of the Queen's Colleges in Ireland, to be exercised in any district in which such electors reside, was not that to which the Home Secretary was irreconcilably opposed. The principle involved in such an extension of the elective franchise is, in the best sense of the term, Conservative, and it is but an obvious de-

velopment of that principle to confer the right of election upon a body of educated men, whose peculiar province it is, to assist in the administration of the law, and who, though not as largely endowed with wealth as some other classes of the community, are more especially interested in the preservation and regulated transmission of property. If Lord Palmerston was prepared to maintain this view of the question in the Cabinet, there is no reason why he may not advocate and promote it, as effectually at least, when relieved from the shackles of office. As to Lord John Russell, during the whole of his public life he has constantly and consistently endeavoured to advance the cause of education, and to maintain the dignity of the law, and it certainly is not from him we should expect any objection, upon principle, to the proposal for conferring upon institutions for the advancement of legal learning, the right of representation.

Referring to the leaders of the great political sections into which the House of Commons is divided, and their antecedents, there is much to encourage and nothing to deter the members of the Profession from availing themselves of the opportunity that now presents itself. It is hardly necessary to observe, however, that to give the movement a fair chance, it must be altogether dissociated from political or party objects. The lawyers, as a body, belong to no party, and comprehend men of every shade and variety of political opinion. To rely upon any party exclusively, or to convert the question into an element of party warfare, would be to destroy that unanimity, without which there could be no reasonable hope of success, and to render success itself an equivocal advantage. There are grounds upon which the proposal to give the Inns of Court and Chancery representatives, commends itself to the politician of every shade,

from the lowest Chartist, through the various stages of Radical, Liberal, Whig, Peelite, to the highest Conservative. On the other hand the lawyers have enemies, and it will be sought to envelope the question in a cloud of prejudice, which must in the first instance be dispelled.

It will, perhaps, be suggested, that the Legal Profession are seeking for some peculiar advantages at the expense of other classes? It is to be hoped, however, that even amongst the prejudiced, those who have minds open to conviction may be convinced by temperate argument, that what is proposed may not be unattended with national benefit, and that no class would be injured by investing a body—whose interests are not those of any particular class but of the general community—with the power of sending an exponent of its sentiments to the House of Commons. If we are asked what advantage the Legal Profession will derive? Our answer is, much if not *all* that it now requires. The Profession, with its organ in Parliament, would have a shape, an organisation, a voice: its objects and views would be explained, its mission and intentions could no longer be misunderstood. The miserable jealousies which have prevented concert and cordial co-operation where they are most required would cease, and there would be more than a chance—all but a certainty—of united action directed to the legitimate end of rendering the administration of justice efficient and certain, and those engaged in its administration more honoured and respected, because more deserving of honour and respect.

The best practical means of giving effect to the suggestion, the value of which we have been endeavouring to impress, now requires consideration. As already observed, it is desirable, no doubt, that the governing bodies of the Inns of Court should head the movement. It must be remembered, however, that the constitution of the Inns of Court is not popular, and that the movements of bodies thus constituted are slow. We should be glad to see the subject taken up and discussed by the Provincial Law Societies. We are persuaded, all that is wanted is a beginning. Let it once be understood that the members of the Profession are united in desiring direct Parliamentary representation, and assistance and support will flow in from numerous and unexpected sources.

For the present, we can only express a hope, that we may shortly be in a position to state, that active and decided measures

have been taken, to promote an object in which every member of the Legal Profession, from the highest to the humblest, is, to some extent, personally interested.

ATTORNEYS' CERTIFICATES AND ARTICLES OF CLERKSHIP.

ONE of our learned contemporaries, *The Law Times*, is evidently mistaken in ascribing to the Incorporated Law Society the misfortune (if such it be) of the reduction of the Duty on Articles of Clerkship from 120*l.* to 80*l.* In all their petitions to Parliament, memorials to the several Chancellors of the Exchequer, and their statements and reasons in support of the repeal of the Annual Tax, the Council invariably proposed to leave untouched the two taxes on Articles of Clerkship and Admissions, amounting to 84,000*l.* a year.¹

It was entirely the act of the Chancellor of the Exchequer to sacrifice 24,000*l.* a year, (one-third of the duty on Articles,) on the alleged ground that the duty was enormous, and formed an unjust barrier against "freer competition" in the Profession. This was a fallacy,—for the Annual Tax was a much greater barrier:—12*l.* a year represents a capital of 240*l.* The parent of the intended articulated clerk could not fail to compute the value of that annual impost, to be paid irrespective of any return. Unlike the brewer, who is taxed according to the extent of his trade, the young attorney must pay whether he has one cause or a hundred. If the Chancellor of the Exchequer had retained the 120*l.*, he might have reduced the Certificate Tax one-half instead of one-fourth, and perhaps have remained at peace at least for another Session.

We consider it most unjust to throw on the Incorporated Law Society any share of the blame for not succeeding in the manner they wished. When the Chancellor of the Exchequer declared the intentions of the Government, we are informed that the Council of the Law Society addressed a full and explanatory statement to all the Provincial Law Societies—to eminent Solicitors in the cities and towns where no Law Society existed,—and to the Law Societies in Scotland and Ireland—and obtained answers from the majority of them in favour of proceeding for a total repeal of the tax, even at the hazard of an entire defeat.

The attorneys and solicitors of the United

¹ The Stamp on Articles amounts to 72,000*l.*, and on Admissions to 12,000*l.*

Kingdom may be supposed competent to decide for themselves on the course they deemed it expedient to adopt. The same plan of united deliberation, we understand, will be pursued in the ensuing Session. The agents for the Bill in London, will act only in concert with the majority of their brethren in the country and the other parts of the empire.

Whilst forming an estimate of the value of past exertions, and of the prospect of the future, it must not be forgotten that 30,000*l.* a year has been struck off this item of professional grievance, and that so far there is a concession to the justice of the claims to relief. The same reasons which superinduced a remission of 25 per cent., will apply to the total abolition of the impost, which ere long must be effected.

We are aware that several attorneys uphold the tax because it keeps out some of the smaller class of practitioners who cannot afford to pay it. On the other hand, there are many who are perfectly competent to pay, yet urgently object to the burthen on the principle that a professional man, who has duly qualified himself and obtained admission on the Roll, ought not to be compelled to take out a licence, like a dealer in exciseable articles.

We agree with several of our correspondents, that the best means of ensuring the respectability of the Attorneys is by a proper educational test. The Examiners have recently taken one important step, with the ready approval of the Judges, in requiring an adequate amount of knowledge in the difficult branch of the Law of Real Property, and we doubt not they will from time to time raise the standard of proficiency both in general and legal learning.

being refused on September 12, they appointed the 18th to take the reconveyance, and for payment of the bill, without prejudice to the right to tax.

On the petition of the mortgagor for a taxation, the *Master of the Rolls* said:—"Taxation is now asked on this ground, that it could not be taxed during the Vacation, although an order could have been obtained for that purpose, and that, as it was necessary to obtain the reconveyance for the purpose of getting it stamped, application was made to Mr. Hubbard to lend the deed for that purpose, but was refused. If I held that this was a sufficient amount of pressure, it would considerably extend the decisions in such cases. The rule certainly is, that there must either be both overcharge and pressure, or such gross overcharge as to amount to fraud. That is the rule of this Court; and to obtain an order to tax after payment, you must make out a case of that description. Here, therefore, it is necessary to show, that the petitioner took every means in his power to get the deed stamped. He applied to Hubbard to lend it, but never asked him to take it himself to be stamped. Hubbard refused to part with the deed upon an undertaking to return it; and he was not bound to do so, for no solicitor is bound to do that on the undertaking of the opposite solicitor, which the latter is not entitled to as a matter of right. Under these circumstances, and looking at the small amount of the bill, it is clear, that I shall be departing from the decisions and contradicting that which I have myself laid down in this Court, if I order a taxation. I must dismiss the application, and with costs." *In re Hubbard*, 15 Beav. 251.

LAW OF ATTORNEYS AND SOLICITORS.

TAXATION AFTER PAYMENT ON GROUND OF PRESSURE.—UNDERTAKING OF OPPOSITE SOLICITOR.

THE solicitors of the mortgagor had sent on August 21, 1851, to the mortgagee's solicitor, the reconveyance for execution, unstamped, requesting to be furnished with his costs, which were accordingly sent on August 23, amounting to 20*l.* 0*s.* 8*d.* On September 1, objections were taken to some of the items, but on the 10th, the mortgagor's solicitors applied for the loan of the deed in order to get it stamped, upon their undertaking for its return, and upon this

DECISIONS ON RECENT STATUTES.

EQUITY JURISDICTION IMPROVEMENT ACT, s. 44.—REPRESENTATIVE, PENDING PROCEEDINGS IN ECCLESIASTICAL COURT.

A DEFENDANT, interested in a suit, died, having appointed an executor by his will, but probate could not be obtained in consequence of the validity of a codicil thereto being disputed in the Ecclesiastical Court. The Court, on motion, under the 15 & 16 Vict. c. 86, s. 44, appointed the executor to represent the estate for all the purposes of the suit, pending the proceedings to obtain probate of the will. *Hele v. Lord Bexley*, 15 Beav. 340.

NOTICES OF NEW BOOKS.

The Laws of Artistic Copyright and their Defects. By D. ROBERTON BLAINE, Esq., Barrister-at-Law. London: Murray, 1853.

THE utility of this work is clearly stated in the Author's Preface, in which he observes, that—

"No treatise appears to have been hitherto published on the subject of Artistic Copyright alone. By 'Artistic Copyright' is meant that protection for his works which the British artist, whether sculptor, painter, or engraver, is entitled to receive.

"That such a treatise is wanted, in consequence of the importance of such rights, will, it is hoped, appear in the following pages, wherein it will be found that, either from ignorance or non-observance of the existing laws of artistic copyright, artists, printers, and other proprietors of such rights, are placed in the greatest jeopardy as to property of that description.

"As this work is chiefly intended for the guidance and information of persons interested in artistic copyrights, the primary object has been to state the law as to such rights as it is conceived to exist, and in so plain a manner that all those persons may understand their rights, remedies, and the mode of transfer of their property.

"And that at the same time the work may not be without its use for the Legal Profession, the views advanced have in most instances been supported by reference to decided cases.

"With regard to the defects of the existing laws of artistic copyright, some suggestions have been made for their remedy; an unusual plan, it may be said, in a work of this nature, and which has only been attempted after considerable hesitation, because it was felt that the necessity for an amendment of such defects is alike urgent and important to a large and meritorious class of artists, whose efforts in the cultivation of the Fine Arts appear destined to have a most important effect on the moral and material welfare of the British people."

After an able introduction, Mr. Blaine arranges the subject of his treatise under the following heads:—

1. The principle upon which Artistic Copyrights should be based, and of British Legislation in respect of such Copyrights.
2. Copyright in Designs, Etchings, Engravings, Maps, Charts, and Plans, made and first published in Great Britain or Ireland.
3. Copyright in works of Sculpture.
4. The chief defects of the existing Laws of Artistic Copyright, with some suggestions for the amendment of such Laws.

POINTS IN EQUITY PRACTICE.

APPOINTMENT OF GUARDIAN TO INFANT WITHOUT REFERENCE.

AN order was made, on petition, for the appointment, without a reference, of the uncle and aunt of an infant as guardians—both the father and mother being dead—where no allowance was sought for maintenance. *Is re Neale*, 15 Beav. 250.

ATTACHMENT AGAINST DEFENDANT ABROAD FOR WANT OF ANSWER.—RETURN.

A writ of attachment was directed to the sheriffs of London, returnable immediately, against the defendant, who was resident in Cuba, and had made default in answering the amended bill.

On a motion to set it aside for irregularity, the *Master of the Rolls* said, "*The case of Boschetti v. Power*, 8 Beav. 180, is strictly in point, and cannot be distinguished from this. It determines, that when a party is out of the jurisdiction and makes default in answering, you cannot issue an attachment returnable immediately in a place you know he cannot be found. Lord Langdale appears to have reserved his judgment in order to ascertain the practice. I am of opinion, that this attachment must be discharged with costs. *Zulueta v. Vinet*, 15 Beav. 273.

LONDON COMMISSIONERS IN CHANCERY.

A MISAPPREHENSION prevails amongst some of our readers, as well as in other quarters, that the Commissions granted to the members of the Council of the Incorporated Law Society to administer oaths in Chancery, were all that the Lord Chancellor intended to issue. We are at a loss to understand how such a mistake could arise. A public notice was placed up in the office of his Lordship's Secretary, containing the regulations under which Commissions might be applied for by solicitors of 10 years' practice,¹ recommended by two barristers and two solicitors, and of which application notice was to be given to the Registrar of Solicitors at the Incorporated Law Society.

We understand that notices have accordingly been received from nearly 150 solicitors, whose several professional residences

¹ See the Regulations at p. 70, *ante*, in the *Legal Observer* for 26th November.

are in various parts of the metropolis, and some in the suburbs,—so that the suitors and all persons having to make affidavits or declarations, may be saved the inconvenience of resorting to the Record and Writ Office within certain limited hours of attendance.

The Lord Chancellor, we are informed, thought proper, from the position of the Council of the Incorporated Law Society, to appoint them without going through the formality of giving notice, which indeed would have been announcing to themselves their own application. This was his Lordship's act, and sufficiently answers the supposition that they had sought the distinction and omitted to recommend their equally respectable brethren. We are assured that they have not personally interfered in behalf of any Commissioner, and in fact have merely a ministerial duty to perform, through their officer, as Registrar of Solicitors under the 6 & 7 Vict. c. 73. They will, of course, ascertain that the applicants are of the required standing in the Profession and duly recommended.

the reward of intelligence and industry, and I am sure that you will not dispute the fact that a considerable portion of our most able lawyers have thus obtained their admission to the law. I am fully persuaded in my own mind, as the result of considerable experience and observation, that (if practicable) a preliminary classical examination of young gentlemen previously to being articled would be the best and most effectual method for preserving the respectability of the Profession, although I do think that the danger to be apprehended as the result of a 40*l.* reduction in the articles' stamp is unnecessarily overrated by some practitioners, especially when we consider that there still remains the heavy premium payable on the execution of articles, the five years' gratuitous service, together with the additional fees on admission, &c. (not to mention the 80*l.* stamp duty still payable on the articles of clerkship).

Surely, sir, if a person is able to surmount these barriers and to become an attorney, a trifling sum of 40*l.* more or less stamp duty on his articles will not be any very great consideration, at least not sufficient in any single instance to constitute the turning point in a matter of so much import.

LEX.

Manchester, 15th Dec., 1853.

EDUCATION OF ATTORNEYS.

To the Editor of the Legal Observer.

SIR,—Referring to the Article on the above subject, in your publication of the 3rd inst., allow me to inquire whether or not you would recommend the order for the examination of clerks on subjects of literature and science to extend to those already articled? And, if so, whether or not you would propose to make any distinction between those who are serving under the 120*l.* stamp and those who have been articled since the passing of the Act of last Session?

My own opinion is, that the proposed extra examination ought not to extend to clerks articled previously to the making of the order for that purpose (if any such order be made), except as regards the service of the articles, and an inquiry into character, which, I think, ought to be exceedingly strict (much more so than it is at present), and equally so to all. But I do think, that if an order for examination in literature or classics were made retrospective, it would not only be exceedingly unjust to those already articled (as the period of clerkship is brief enough for the clerk to obtain a thorough knowledge of the Law), but their legal knowledge would consequently be very superficial at the expiration of their articles, as a great portion of the time which ought to (and otherwise would) be devoted to the study of the Law, would of necessity be consumed in acquiring a knowledge of languages, &c., to enable them to pass muster at the examination,—the latter remark would apply especially to those clerks who have had their articles given to them as

The Profession owes a deep debt of gratitude to the Incorporated Law Society for the exertions it has used to elevate the character, and to improve the moral influence of attorneys; but the reduction of the stamp duty on articles of clerkship claims its earnest consideration, lest an ignorant, uneducated, class of men may degrade the Law into an engine of extortion and chicanery.

Five years is ample time, sufficient for any man, possessed of merely moderate abilities, to make himself master of the elements of Latin, and even Greek and French. I would, therefore, humbly submit, that an examination in one of these languages should be made an absolute necessity before entrance into the Profession.

Secondly, I would most earnestly recommend, that some honorary distinction should be conferred upon candidates, either by placing them in classes, or making their examination so difficult as to be worth the while of working up for. Attendance upon a certain number of lectures might also be made compulsory.

I think under such a system hardly few, if any, disreputable characters would endeavour to force themselves into so honourable and gentlemanly a Profession, as that of the Law.

AN INQUIRER.

QUERIES AND ANSWERS OF ARTICLED CLERKS.

NOTICE OF EXAMINATION AND ADMISSION.

I WAS articled, on 11th January, 1849. omitted to give notice before last Term in order to apply for admission in the ensuing Term. Is not full notice sometimes dispense

with, and in what case, as I am anxious to apply next Term? D.

[It is in the power of a Judge to dispense with full notice. The course is to apply on an affidavit showing the reason for omitting to give notice, and the injury which will arise by delay, and asking to be examined in the Term, and admitted on the last day. Thus public notice will be given by including the name in the printed list on the 1st day of Term.—Ed.]

COLONIAL ATTORNEYS.

Is an attorney in Australia obliged to continue taking out his certificate in England? And if not, when he returns to this country will he have to pass the examination again, or by renewing it annually would it be sufficient? H.

[No attorney is required to take out an annual certificate if he does not practise here. An attorney returning from a British colony where the same Law prevails as in England, need not undergo another examination, unless the Judge should think after a lapse of many years he would be incompetent to discharge the duties of an attorney.—Ed.]

MODE OF SERVICE.

Is there any objection to an articulated clerk serving the last 18 months as follows:—six months with a conveyancer; six months with a Common Law barrister; and six months with the London agent of the attorney to whom he is articulated? S.

[Certainly not: he may serve a whole year with a barrister, whether a Conveyancer, Equity draftsman, or Common Law barrister, or a special Pleader; and he may also serve a year with the London agent.—Ed.]

SOLICITORS' DIARY FOR 1854.

THE edition of this work for 1854 appears to be an improvement on former years, and commends itself to the patronage of the larger branch of the Profession, for whose use it has been especially composed. It contains much valuable information and many tables and statistics of practical importance. The Diary, however, in all these works, is the chief thing to the man of business, and the "Solicitors' Diary" is well designed and executed.

FUSION OF LAW AND EQUITY.

ON the different views taken regarding the extent of the proposed Fusion of Law and Equity, we are glad to refer to the able Introductory Lecture of Mr. Archer Shee, contained in our last two Numbers, in which we think the subject is treated of very conclusively.

We subjoin the reply of "A Barrister" to one of our correspondents:—

"By way of exemplification of the maxim of Sir William Blackstone, that 'all Courts should have the same rules of evidence;—all should have the best, or they cease to be Courts of Justice,' I would remark that if the *soi-disant* Baronet of the late Gloucester Assizes had been a 'Suitor in Equity,' he would have been questioned before an 'Examiner.' I beg leave to ask, on what grounds of reason or policy, on what principles of dissent from the views of our illustrious Commentator, is a suitor of Justice to be debarred from using the most effectual means for eliciting the truth. According to the existing 'Jurisprudence,' he is restricted to the worst and most ineffectual mode, on a mere arbitrary classification of his 'Cause.'—I should say, on a foolish and deceptive designation of it.

"A BARRISTER."

NOTES OF THE WEEK.

THE *Legacy and Succession Duty* Office will be closed on Monday, the 26th December.

INCORPORATED LAW SOCIETY.

The *Hall, Library, and Offices*, will be closed on Monday, the 26th December.

LIBRARY.—EVENING ATTENDANCE.

On and after *Tuesday*, the 27th December, the Library will be closed at 9 o'clock in the *Evening*, except on the Evenings of Lectures, when it will continue open until 10 o'clock.

SPECIAL JURY.—REMUNERATION WHERE CASE SETTLED.

IT appeared that the case of *Meyer v. Thornton*, which was the first in the paper for December 17, at the Nisi Prius Sittings, Guildhall, had been settled. Lord Campbell, C. J., said, that the special jurymen ought to be paid, as their attendance had not been countermanded.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

(Coram the Lord Chancellor and L. J. Turner.)

Watlington v. Waldron. Dec. 14, 1853.

DEVISE, CONSTRUCTION OF.—PROVISO AS TO CUTTING TIMBER.—TENANT FOR LIFE WITHOUT IMPEACHMENT OF WASTE.—ASSIGNEE OF TERM.

Estates were devised for a term of 99 years, without impeachment of waste, in trust for sale to pay legacies, debts, and annuities, with a proviso that no part of the timber on the residue of his freehold estates should be cut until the testator's granddaughter should attain 21, when it should be lawful for the trustees to cut down and sell such as they should think fit, and to pay the proceeds to such granddaughter. She attained 21 after the death of the testator, who survived his son, the tenant for life, without impeachment of waste, under the will, and part of the estates had been sold in an administration suit, subject to the proviso: Held, on special case under the 13 & 14 Vict. c. 35, that the proviso only operated on the granddaughter attaining 21 before her father's death, and that the timber went to the purchaser as assignee of the term.

THIS was a special case under the 13 & 14 Vict. c. 35, for the opinion of the Court on the construction of the will of the testator, Mr. John Webb, whereby he devised certain estates for a term of 99 years, without impeachment of waste, in trust to sell, in order to make up any deficiency in his personal estate to meet the payment of debts and the legacies and annuities thereby given, and subject thereto to his son for life, without impeachment of waste, with remainder to his granddaughter, Caroline C. Webb, for life, without impeachment of waste, with remainder to her issue in tail. It was also provided, that no part of the timber on the residue of his freehold lands, tenements, and hereditaments, should, on any pretence, or for any purpose whatsoever (except for necessary repairs), be felled or cut until his granddaughter, Caroline S. Webb, should attain the age of 21, when it should be lawful for them to cut down and sell such timber as they should think fit, and to pay the proceeds to his said granddaughter for her sole and separate use and benefit, to whom he thereby gave and bequeathed the same. It appeared that the testator died in 1828, having survived his son, and that the granddaughter attained 21 in 1836, and that part of the estates were sold under a decree in an administration suit, which had been instituted, subject to the proviso of the will. The granddaughter had married and was now dead, leaving one child. This special case had been transferred to this Court on the request of Vice-Chancellor Kindersley in consequence of the decision in *Webb v. Grace*.

Russell and Morris for the purchaser; *Bacon and Lonsdale* for the husband, *Baily and Hoffman* for the child of the granddaughter.

Hewitt v. Hewitt, 2 Eden, 332; *Ambl. 668*; *Fordyce v. Bridges*, 2 Phill. 497; *Briggs v. Earl of Oxford*, 5 De G. & S. 156, were cited.

The Court said, the proviso in favour of the granddaughter, to cut some of the timber for her benefit, was only to take effect if she attained 21 during the lifetime of her father, the tenant for life without impeachment of waste, and if it had not been necessary to raise the term. This term was for payment of debts and legacies, and the restriction of the proviso would render a sale almost impossible, and it was therefore made subservient to the term. The gift of the timber to the granddaughter would be inconsistent with the devise of the term without impeachment of waste, and would destroy the trust for payment of debts and legacies. The plaintiff, as assignee of the term, would therefore be entitled to all the timber on the estates, except such as were for ornamental purposes, and the judgment would be for the plaintiff.

(Coram the Lord Chancellor and Lords Justices.)

In re Edmond, ex parte Nielson. Dec. 13, 15, 1853.

JOINT STOCK COMPANIES' REGISTRATION ACT.—SALE OF SHARES BY HOLDER NOT REGISTERED VOID BY S. 26. — SUBSEQUENT BANKRUPTCY.

Held, dismissing with costs an appeal from Mr. Commissioner Skirrow, that shares in an insurance company, completely registered, passed to the assignees on the bankruptcy of the holder, where he had not signed the deed of settlement, nor been registered, under the 7 & 8 Vict. c. 110, s. 26, and that a sale thereof before the bankruptcy was void.

THIS was a petition of appeal from the decision of Mr. Commissioner Skirrow. It appeared that 200 shares in the Royal Assurance Company had been allotted to the bankrupt, and that he had paid 15s. premium thereon, together with two calls made in respect of such shares, but that he had never executed the deed of settlement, nor been registered as a shareholder. The company had been completely registered under the 7 & 8 Vict. c. 110, which provides, by s. 26, that "until any such subscriber or person shall have been duly registered as a shareholder in the said registry office, it shall not be lawful for such person to dispose by sale or mortgage of such share or of any interest therein, and that every contract for sale or disposal of such share or interest shall be void, and that every person entering into such contract shall forfeit a sum not exceeding 10l." It appeared that the bankrupt had sold 155 shares in January, 1846, through

the petitioners, who were share-brokers at Liverpool, and that a fiat in bankruptcy was issued in March, 1846. The Commissioner had held that such sale was inoperative under s. 26 of the 7 & 8 Vict. c. 110, and that the shares passed to the assignees as part of the estate, whereupon this appeal was presented.

Russell and Eddis in support; *Bacon, Tomlinson, and Smythe* for the assignees, contra.

The following cases were cited:—*Wilkinson v. Anglo Californian Gold Mining Company*, 21 Law J., N. S. Q. B., 327; *Hibblewhite v. M'Morime*, 5 M. & W. 402; *Galvanised Iron Company v. Westoby*, 8 Exch. R. 17; *Austen v. Craven*, 4 Taunt. 644; *Sutton v. Tatham*, 10 A. & E. 27; 2 Per. & D. 308.

Cur. ad. vult.

The Court said, there was no difference between Law and Equity in the principle which ought to decide the present case. The Legislature had made it imperative on any person selling shares to have subscribed the deed of settlement, and had declared any contracts void, and subjected the party entering thereinto to a penalty. The brokers had no better right to sell the scrip than their principal, who could not do so until he had executed the deed, and the appeal would therefore be dismissed, with costs.

Lords Justices.

In re Rutter. Dec. 20, 1853.

ADMINISTRATION SUIT BY SOLICITOR RETAINED BY LUNATIC'S WIFE CLAIMING FOR COSTS ON COMMISSION OF LUNACY.—JURISDICTION.

A solicitor filed a bill for the administration of a lunatic's estate, claiming as a creditor for his costs on a commission de lunatico inquiring into the retainer by the lunatic's wife: Held, that he was entitled to stand as a creditor in his own right in respect of such costs, although not retained by the lunatic or his committee, and that the Master of the Rolls had jurisdiction in the suit in the question as to the amount of the debt.

It appeared that a bill had been filed for the administration of the estate of this lunatic, by a solicitor who had been employed by his wife to sue out a commission de lunatico inquirendo, and that the costs thereby incurred not having been paid, he claimed in respect thereof as a creditor on the estate.

Anderson now applied, by request of the Master of the Rolls, who was of opinion that the question as to whether the plaintiff was a creditor, his employment not being by the lunatic or by his committee—was in the lunacy and not in the suit.

Busk for the personal representatives of the lunatic.

The Lords Justices said, that assuming the proceedings in reference to the commission were proper and for the lunatic's benefit, the plaintiff was entitled in his own right to stand

as a creditor for his costs against the estate, and that the Master of the Rolls had jurisdiction in the suit on the question as to the amount of debt, and the matter was accordingly referred back.

Master of the Rolls.

Horlock and others v. Smith and others. Dec. 14, 1853.

MARRIAGE SETTLEMENT. — COVENANT BY HUSBAND TO PAY MONEY TO TRUSTEES.—VOLUNTARY ADVANCE.

*By a marriage settlement the husband covenanted to pay 3,000*l.* to the trustees, who were to invest the same, together with a sum of 17,000*l.* then on mortgage in land, upon the request in writing of himself and his wife. The latter sum had only been so invested, but the husband had expended 2,000*l.* in improvements on the land purchased, and a sum of 400*l.* for the costs of such investment. These payments were not, however, made upon the consent of the parties in writing, although it was alleged, with the wife's privity: Held, that such payments were voluntary, and that on his death his estate was liable.*

By the marriage settlement of Mr. and Mrs. Smith, in June, 1840, the former covenanted to pay a sum of 3,000*l.* to the trustees thereby appointed, which would, with the addition of a sum out on mortgage of 17,000*l.*, make up the sum of 20,000*l.*, to be invested in the funds, and with their consent in writing, to be afterwards laid out in purchasing land. It appeared that 17,000*l.* only had been accordingly invested in such purchase before Mr. Smith's death, in March, 1847. In 1852, Mrs. Smith married Mr. Horlock, and by a settlement, all her interest under the settlement of June, 1840, was assigned on certain trusts. No part of the 3,000*l.* had been paid, and this suit was therefore instituted in respect thereof, against the trustees of the settlement of 1840 and the executors of Mr. Smith's will.

Roupell and Hobhouse for the plaintiffs; *Lloyd, R. Palmer, Elmsley, Welford, and Karlake*, for the defendants, contra, on the ground the greater part of the sum in question had been laid out with the privity and consent of Mrs. Smith, in improving and erecting buildings on the other land purchased, and a sum of 400*l.* which had been paid for the costs of such purchase, was claimed by the executors as a set-off.

The Master of the Rolls said, that the sum laid out in the improvement of the land had been voluntarily expended by Mr. Smith, without any reference to the trust, the consent of the parties in writing not having been obtained. And as to the costs relative to the investment, they had also been voluntarily paid by Mr. Smith as tenant for life, and not by the trustees, and the plaintiff was therefore entitled to a decree, with costs.

Darlin v. Darlin. Dec. 15, 1853.

HUSBAND AND WIFE.—ADVANCE BY WIFE ON HUSBAND DEVISING LAND, &c., PURCHASED TO HER.—NEW WILL.

Where it appeared a wife had advanced moneys to which she was entitled, to her husband, for the purchase of land and building a house thereon, upon his making a will in her favour, and he had afterwards made a will devising such property to his brother: Held, on her surviving her husband, that she was entitled nevertheless thereto.

Held, also, that she was entitled to certain gas shares and promissory notes settled to her separate use, which had been transferred to her husband, where it appeared that although the interest had been received by him, he had handed it to her.

It appeared that on the marriage of the plaintiff, in 1835, with the Rev. Mr. Darlin, she was entitled to certain property under the will of a Mrs. Paramore, to her separate use, and to other property not so secured, and that her husband had induced her to advance out of the latter property the purchase-money of a piece of ground at Cirencester, Gloucestershire. The plaintiff afterwards discovered the conveyance had been made to her husband, and on his applying for a further advance to erect a house on the land, the plaintiff had refused to make the same unless he consented to execute an assignment or assurance of such property to herself. He thereupon executed a will in her favour in April, 1845, and the requisite funds were thereupon advanced; but on his death in 1851, it appeared he had bequeathed the house and land, under a subsequent will in the following November, to the defendant, his brother, whereupon this suit was instituted to assert the plaintiff's right thereto. She also claimed certain gas shares and promissory notes, which although settled to her separate use, had been transferred to the deceased.

R. Palmer and Grove in support; Lloyd and Hardy for the defendant.

The Master of the Rolls said, the plaintiff had been induced to make the advances by the former will, and had therefore only consented to the assignment of the property to her husband during his life, in the event of his surviving her; and as to the promissory notes and shares, it appeared from a book produced in evidence, that the interest had been received by him for her use and benefit, and a declaration would accordingly be made in her favour, with costs out of her late husband's estate, but without costs as against the defendant.

Vice-Chancellor Kindersley.

In re Legh's settled Estates. Dec. 9, 1853.

RAILWAY COMPANY.—BROKERAGE ON INVESTMENT OF PURCHASE-MONEY OF LAND AND ON SALE TO PAY OFF MORTGAGES.—COSTS OF TENANT FOR LIFE AND

TRUSTEES OF SETTLEMENT APPEARING SEPARATELY ON PETITION.

Certain mortgaged land taken by a railway company had been paid into Court, and vested in 1844, and the costs of such investment had not been taxed: Held, on petition by the trustees of the settlement for the application of such fund in reduction of the mortgage, that the railway company was only liable to the brokerage on the sale, and not of the investment, and that the mortgagees were entitled to appear separately from the trustees.

Bacon appeared on behalf of the trustees of a settlement, in support of this petition, for the application of the purchase-money of certain land taken by the Midland Railway Company in reduction of a mortgage on the estates, and for payment of the costs by the company, including the brokerage of the investment in 1844, and of the present sale. The tenant for life and the mortgagees appeared separately.

Erskine for the tenant for life consented; Speed for the company, contra, as to the brokerage on the investment.

The Vice-Chancellor said, that as the costs of investment had never been taxed, the costs of brokerage on the selling out could only be allowed. With respect to the costs of the separate appearance of the tenant, the case did not appear one to justify his appearing with the trustees, and the company was therefore liable thereto.

Gwynn v. Burns and another; Way v. East. Nov. 3, 7; Dec. 14, 1853.

CHARITABLE GIFT.—RESERVATION OF LIFE ESTATE TO GRANTOR BY DEED.—INVALIDITY.

Where it appeared that a deed giving a rent-charge for a term of years to charitable purposes, implied that it should not be put in force until the grantor's death, and that no present benefit was to be derived: Held, that it was void under the 9 Geo. 2, c. 36, s. 1.

This was a suit to set aside a deed (which had been duly enrolled) dated 26th January, 1839, whereby a rent-charge of 95*l.* per annum, on certain houses in Great Suffolk Street, and the Haymarket, was granted for 99 years, to commence immediately on the execution, for certain charitable purposes connected with Enon Chapel, Church Street, Marylebone. Among the papers of the deceased, in November, 1850, was found a memorandum, dated in Dec. 1847, and signed by the trustees, whereby it was declared that they were aware the grantor had granted the rent-charge in question, but designing that the annuities directed to be paid thereout should not be paid till after his death, and that he had in lieu thereof made, during his lifetime liberal contributions to the several charities, and then proceeded,—"therefore we do hereby declare, that we could not in justice demand any of the annuities until it shall please Divine Providence to remove by

death Mr. Thomas Gwennap, and in proof of our purpose and intention, and for the satisfaction of Mr. Gwennap and his heirs, we do attach our names to this document, which we wish to be an entire discharge of all claims on the said bond up to this date, and also engage to renew the same discharge every half-year during the life of Mr. Thomas Gwennap."

Swanston and W. D. Lewis for the plaintiffs; *Craig and Buxton* for some of the defendants in support on the ground the deed was void under the 9 Geo. 2, c. 36, s. 1,—there being an understanding that the grantor should receive the rents until his death.

C. Purton Cooper, W. Hislop Clarke, W. H. Smith, Greene, and Campbell for the defendants.

Baily, Glasse, H. R. Bagshawe, and Bagshawe, jun., for the trustees; *W. M. James and Wickens* for the Attorney-General; *J. Sidney Smith and Loudon* for other parties.

Cur. ad. vult.

The Vice-Chancellor, after stating the facts, said, that instead of the deed being delivered to the trustees, it remained in the grantor's custody for many years, and none of the annuities thereunder were paid during the period of 12 years which elapsed before his death, and no attempt had been made to enforce the trusts, and it had been carefully concealed from the deacons and members of the congregation until June, 1850. These circumstances afforded an inference that the deed should not be put in force, and implied that no present benefit was to be derived, and the deed must therefore be declared void,—the costs to come out of the estate.

Vice-Chancellor Stuart.

Bates and others v. Brothers. Dec. 13, 1853.

BENEFICE. — JUDGMENT CREDITORS, PRIORITIES OF, WHERE ONE OBTAINS SEQUESTRATION AND IN POSSESSION.

Where a creditor under a judgment, registered after that of the plaintiffs, had sued out a writ of sequestration on the benefice of the debtor and was in possession: Held, that this Court would not disturb him as he had, by greater diligence, obtained a legal right, and was in possession, and an application for the appointment of a receiver on behalf of such prior incumbrancers was therefore refused.

It appeared that the plaintiffs had entered up and registered on Jan. 25, 1851, a judgment against the defendant, the rector of Monks Horton and vicar of Braybourne, Kent, on a warrant of attorney to secure a debt of 300*l.* and that by deed dated on Nov. 15 following, he had also assigned the underwood on the glebe lands, together with his furniture, as a collateral security for the sum due under the warrant of attorney. By this deed it was recited, that the plaintiffs had, on the defendant's request, agreed to allow him to receive the rent-charge in lieu of tithes, which should be due, and which had been assigned to the plaintiffs by a memorandum dated on Jan. 24, 1851, for further securing the sum of 300*l.* It also

appeared that Mr. A. Dangerfield, on Dec. 13, 1851, entered up judgment in an action for 8,000*l.* against the defendant, and registered the same, and that he had sued out a writ of sequestration in 1852 and was now in possession of the rents and profits of the benefice. The plaintiff now moved for the appointment of a receiver of such profits, claiming under their judgment of prior date.

W. D. Lewis in support, cited *Hawkins v. Gathercole*, 1 Sim. N. S., 63, and 1 & 2 Vict. c. 110, ss. 13, 19; *Glasse and J. V. Prior*, contra, referred to *Lane v. Horlock*, 1 Drewry, 587; *De Gez* for the Archbishop of Canterbury.

The Vice-Chancellor said, it was unnecessary to decide on the construction of the 13 Eliz. c. 20, s. 1, relating to charges on benefices as applicable to the law under the 1 & 2 Vict. c. 110, and having regard to the decision of *Long v. Storie*, 3 De G. & S. 308, as the present case must be decided on the doctrine, which was well established in this Court, that where there were several equitable incumbrancers, and one by greater diligence, though subsequent in point of time, had obtained a legal right, and was in possession thereunder, this Court would not disturb him. The plaintiffs had, moreover, under the deed of November, 1851, renounced their rights to receive the rent-charge in favour of the defendant under whom Mr. Dangerfield held, and they were therefore estopped thereby from obtaining possession of such rent-charge. The motion would accordingly be refused,—the defendant's costs to be costs in the cause.

Stone v. Godfrey. Dec. 10, 14, 1853.

TENANT BY THE CURTESY. — RELINQUISHMENT OF DOUBTFUL RIGHT. — BENEFIT IN EXCHANGE.

The plaintiff had filed a bill as next friend of his daughter in respect of certain estates, and by a decree in 1830, he was appointed guardian, and received the rents and profits for her maintenance. It appeared there was a doubt whether he was not entitled as tenant by the curtesy: Held, that the arrangement would not now be disturbed, as he had obtained a certain benefit by receipt of the rents in exchange for the relinquishment of such doubtful right, and although, in fact, he was entitled as tenant by the curtesy.

It appeared that Mrs. Stone was entitled to the rents of one-third part in certain real property which was vested in a trustee, but that she had not before her death in 1824, received any portion thereof, her title thereto being denied. It was then proposed to file a bill on behalf of the defendant, her daughter, who was an infant, to establish her right, and afterwards, on the late Mr. Duckworth being of opinion the plaintiff was not tenant by the curtesy, he filed a bill as her next friend, and in 1830 a decree was made by Lord Langdale, Master of the Rolls, in her favour, with a conveyance, and the plaintiff, as guardian, received her proportion of the rents for her maintenance during

her minority. Disputes had afterwards arisen, and this bill was filed by the plaintiff claiming as tenant by the curtesy.

Lee and Fooks in support; *Glasse and R. Morris*, contra.

The *Vice-Chancellor* said, that although the plaintiff was, according to the doctrines of this Court, entitled as tenant by the curtesy, he had been put in possession of the rents during the defendant's minority. It was a settled principle, that when an arrangement had been made on a doubtful question of right, whereby such right was given up and a certain benefit obtained in exchange, such arrangement would be upheld. The plaintiff was therefore not entitled to relief on the ground of mistake, and the bill would be dismissed, but without costs.

Dixon v. Pyner. Dec. 20, 1853.

DECREE FOR SALE OF ESTATE BY PUBLIC AUCTION.—ORDER ON PETITION FOR SALE BY PRIVATE CONTRACT OF PART WITH DEFECTIVE TITLE.

Where it appeared that, as to a small portion of an estate, ordered to be sold by public auction, there was a defective title, and the special conditions of sale necessary would be prejudicial, an order was made on petition for a sale by private contract of such portion, on the parties interested appearing and consenting.

In this suit an order had been made for the sale by public auction of certain trust estates, but it appeared that in respect of two small portions of the same the title was defective, and that any special conditions of sale to meet the case would be prejudicial. This petition was therefore presented for leave to sell such portions by private contract to the tenant for life, who had agreed to purchase the same.

W. Hislop Clarke in support; *Shebbeare and C. H. Keene*, for the other parties interested, consented.

The *Vice-Chancellor* said, as such sale was for the benefit of the estate, and the parties consented, the order would be made as prayed.

Vice-Chancellor Wood.

Hitchcock v. Carew. Dec. 7, 1853.

LEAVE TO PROVE DEED ON HEARING BY AFFIDAVIT.—ELECTION TO TAKE EVIDENCE ORALLY.

A motion was refused, with costs, for leave to the plaintiff to prove certain matters on the hearing by affidavit, including a deed which was impeached by the answer, where the defendant had elected to take the evidence orally.

THIS was a motion under the 15 & 16 Vict. c. 86, s. 36, for leave to the plaintiff to prove certain matters on the hearing of this cause by affidavit, including a mortgage-deed which was impeached by the answer, although the defendant had elected under the 31st Order of 7th August, 1852, to take the evidence orally.

Amphlett in support, on the ground an ap-

pointment could not be obtained from the Examiner until the latter end of January.

Southgate for the defendant, contra, on the ground the proof by affidavits would save no time, as the appointment to cross-examine the witnesses under the 34th Order could not be obtained at an earlier period.

J. H. Palmer, for an incumbrancer, applied for his costs.

The *Vice-Chancellor* said, that as the deed was impeached, and could not under the old practice be proved as an exhibit on the hearing, and no time would be gained by granting the motion, and it might be most important to the defendant to have the evidence taken orally, the motion would be refused, with costs.

Besemer v. Besemer. Dec. 8, 1853.

CROSS-EXAMINATION OF PLAINTIFF ON AFFIDAVIT BEFORE FILING AFFIDAVIT IN REPLY.

An order was made under the 15 & 16 Vict. c. 86, s. 40, for the plaintiff to attend the examiner to be cross-examined on his affidavit, before the defendant had filed his affidavits in reply.

THIS was an application under the 15 & 16 Vict. c. 86, s. 40, for an order on the plaintiff to attend the Examiner in order to be cross-examined on an affidavit which he had filed in this suit for the dissolution of partnership between himself and the defendant. It appeared that on a motion for a receiver and an injunction, the Court had given the defendant time to answer the plaintiff's affidavits.

Southgate in support; *Rolt and Eddis*, for the plaintiff, contra, on the ground the defendant should first file his affidavits in reply.

The *Vice-Chancellor* said, the facts elicited by a cross-examination might obviate the necessity for filing any affidavits, and the application would therefore be granted,—the period within which the affidavits in answer were to be filed not to be altered.

In re Parker's Trust Estate. Dec. 17, 1853.

MAINTENANCE OF LUNATIC.—PAYMENT TO PARISH OF FUND IN COURT.

An order was made on the petition of the guardians of a poor law union and of the parish overseers of the poor, for the sale of certain stock to which a person of unsound mind, though not so found by inquisition, was entitled, and for payment of the proceeds for the maintenance of the lunatic in the county asylum.

THIS petition was presented by the guardians of the poor of Richmond union and the overseers of the poor of Richmond parish, for the sale of certain stock to which Mr. William Henry Parker was absolutely entitled, and for payment of the proceeds to the clerk of the guardians on behalf of the parish, out of whose funds this person had been maintained in the county lunatic asylum on his being of unsound mind, though not so found by inquisition.

Selwyn, in support, cited *In re Upfall's Trust*, 3 M'N. & G. 281, and the 7 & 8 Vict. c. 101, s. 27.

The Vice-Chancellor made the order as prayed.

Court of Queen's Bench.

Tetley v. Easton. Nov. 25, 1853.

ACTION FOR INFRINGEMENT OF PATENT.—DISCLAIMER IN SPECIFICATION OF MACHINERY FORMING PART OF INVENTION, BUT NOT NEW.

On the trial of an action for the infringement of a patent for a centrifugal pump, it appeared that a wheel, which formed part of the machinery, was not disclaimed in the specification as not new: Held, discharging a rule for a new trial, that as the wheel clearly formed part of the invention, and was not new, the defendant was entitled to judgment.

THIS was a rule nisi obtained on November 7 last, to set aside the verdict for the defendant and for a new trial of this action, which was brought for the infringement of a patent for a centrifugal pump, and to which the defendant pleaded that the plaintiff was not the first inventor, and that the invention was not new. It appeared on the trial before *Wightman, J.*, at the last Yorkshire Assizes, that part of the machinery, consisting of a wheel, was not new, whereupon a verdict was directed for the defendant.

Knowles and Hindmarch showed cause against the rule, which was supported by *Atherton, H. Hill*, and *Kemplay*.

The Court said, that as the wheel was clearly part of the invention, and was not new, and there was no disclaimer in the specification of it as part of the invention, the rule must be discharged.

Queen's Bench Practice Court.

(*Coram Crompton, J.*)

Swinburne v. Carter. Nov. 24, 1853.

RULE ON PLAINTIFF FOR SECURITY FOR COSTS.—WHERE RESIDENT IN SCOTLAND WITH ESTATES IN ENGLAND.

A plaintiff was resident in Scotland, but was possessed of estates in England of considerable value over and above the charges thereon: Held, that inasmuch as such property might be mortgaged, and would not therefore be available under an elegit, security for costs must be given.

It appeared in this action that the plaintiff was resident in Scotland, but was possessed of estates in Durham of considerable value over and above the charges thereon.

A rule nisi had accordingly been obtained for security for costs, against which *Hayes* showed cause. *Wise* in support.

The Court said, that as the affidavit did not show the property in this country was available and it might be mortgaged, and therefore not

liable under an elegit, the rule must be made absolute on the plaintiff to give security.

Court of Common Pleas.

Chace v. Bradley. Nov. 23, 1853.

VENUE, CHANGING.—ON COMMON AFFIDAVIT AFTER TERMS TO ACCEPT SHORT NOTICE OF TRIAL.

Held, discharging a rule nisi on appeal from Cresswell, J., at Chambers, that a defendant was not entitled to change the venue on the common affidavit, where he had obtained time to plead on terms to take short notice of trial for the ensuing Middlesex Sittings.

THIS was a rule nisi, on appeal from *Cresswell, J.*, at Chambers, to change the venue in this action from Middlesex to Warwickshire, on the common affidavit that the cause of action arose in the latter county, and that all the defendant's witnesses were resident there, and also all the plaintiff's, to the best of his belief. It appeared that the defendant had obtained time to plead on terms of taking short notice of trial for the ensuing Middlesex Sittings, but that without pleading he had applied at Chambers to change the venue.

Phipson showed cause against the rule, citing *De Rothschild v. Shilston*, 8 Exch. R. 503, and referred to the 18th rule of Hilary Term last.

Manisty in support.

The Court said, that the defendant could not, after having consented to take short notice of trial for the ensuing Middlesex Sittings, apply to change the venue on the common affidavit, and the rule would therefore be discharged.

Court of Eschequer.

Austin v. Mills. Nov. 16; Dec. 8, 1853.

ACTION ON COUNTY COURT JUDGMENT WITH COUNT FOR CONSIDERATION ON WHICH JUDGMENT PROCEEDED.—DEMURRER.

To an action on a County Court judgment, with a count for the consideration on which such judgment proceeded, the defendant demurred to the first count and pleaded the judgment recovered to the second: Held, that he was entitled to judgment.

In this action on a judgment recovered in the Durham County Court, at Sunderland, established under the 9 & 10 Vict. c. 95, with a count for the consideration on which such judgment proceeded, the defendant demurred to the first count, and pleaded the judgment recovered to the second. To this plea the plaintiff put in a demurrer.

Unthank for the plaintiff, contended, the decision in *Berkeley v. Elderkin*, 1 E. & B. 305, was erroneous. *T. Jones* for the defendant.

Cw. ad. vult.

The Court said, that according to the case cited, an action could not be maintained on the judgment, and that as such judgment was complete and final, an action could not be brought for the same cause of action, and the defendant was therefore entitled to judgment.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, DECEMBER 31, 1853.  
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BANKRUPTCY INQUIRY COMMISSION.

EXPECTED ALTERATIONS.

THE Commissioners appointed to inquire into the Bankruptcy Laws, it is said, expect to be able to present their report, before the meeting of Parliament in February next, so as to afford the opportunity for immediate legislation. Giving the Commissioners credit for extraordinary diligence, we confess a disposition to regard with suspicion an announcement indicating a degree of haste unsuited to the gravity of the task the Commissioners have undertaken, and inconsistent with the fulfilment of the just expectations of the public and the Profession. The Commissioners, we believe, only commenced their investigation with the month of November, and their proceedings, so far as they are publicly known, have been confined to distributing a paper of printed questions, and the examination of certain witnesses. The printed questions are of a general character, and appear to have been circulated by the Commissioners, with a view of collecting the opinions and suggestions of those who were supposed to be particularly conversant with the administration of the law of Bankruptcy. Why it should have been thought necessary to invest such a paper with a character of confidence or privacy, we are at a loss to conceive; but as the copy now lying before us contains the intimation that "gentlemen receiving these questions are requested *not* to publish them," though convinced that the objects of the Commission would be best promoted by publicity, we decline to follow the example set in some quarters, and refrain from giving the questions referred to, a more extended circulation than they have already received. The answers to the ques-

tions distributed, or such portion of them as the Commissioners think fit, are to be annexed to the report, and it will then be seen to what extent, and in what spirit, the suggestions made to the Commissioners have been pursued and carried out. The examination of witnesses by the Commissioners has, up to this time, been confined, as we understand, to some of the officers of the Court of Bankruptcy, a few solicitors constantly practising in the Court, and some half dozen persons connected with trade in the City, who, some years ago, united themselves into an association for the purpose of amending the laws of Bankruptcy and Insolvency. The only witnesses, we are informed, now remaining to be examined, are such of the learned Commissioners as desire to avail themselves of the opportunity, which can hardly be necessary, when it is remembered that both the town and country Commissioners of Bankruptcy are directly represented upon the inquiry by Mr. Commissioner Holroyd and Mr. Commissioner Hill. We are far from insinuating that any witness has been examined upon this inquiry who ought not to have been examined, but if the evidence is to be prematurely closed we are apprehensive that the report of the Commissioners will be founded upon too narrow a basis, and that the law, to use an expressive phrase of the late Mr. Cobbett's, will be *cobbled*, rather than mended or improved.

The present Commission of Inquiry would probably have never been heard of, but for the circumstance that the incomings of the Court of Bankruptcy from fees and stamps were gradually diminishing, so as to be unequal to meet the expenditure for compensations and salaries. The annual receipts have at length become so small, that, although reinforced by the dividends arising

from the investment of above £1,250,000, the accumulations of bygone years, the Court has ceased to be self-supporting, and the annuitants, too liberally quartered upon its funds, as well as the existing officers of the establishment, have no security for the continued performance of the obligations entered into with them on behalf of the public, unless the salaries and compensations payable out of the funds of the Court of Bankruptcy, are in future made payable out of the Consolidated Fund, or that the business can be made to increase so that the fees and charges paid by the suitors may equal the payments and expenses of the Court.

The principle recognised and advocated by the late Lord Langdale, and more recently by an authority not less entitled to respect, Lord St. Leonards, that the expenses of administering justice should be defrayed by the public and not by the suitors, is at least as applicable to the Court of Bankruptcy as to any other of the judicial institutions of the country. If the salaries of the present Judges and officers of the Court should be defrayed from the national resources, so *a fortiori* ought to be the compensations and annuities paid under legislative provisions to retired officers. The suitors of to-day can, upon no principle of justice, be called upon to contribute to the incomes of officers who retired from the public service when the Court was placed upon its present footing, more than twenty years ago.¹ We shall be surprised, therefore, if the inquiring Commissioners have not found a very general concurrence of opinion, in the expediency of transferring, not only the dead but the living, weight of the Court of Bankruptcy from the shoulders of the present suitors to the national funds. The chief obstacle to be anticipated in effecting this manifestly desirable arrangement, will be the reluctance of Mr. Gladstone, or whoever may hold office as Chancellor of the Exchequer when the question is discussed, to increase the national burthens even to the comparatively insignificant extent of 80,000*l.* or 100,000*l.* per annum. Should the reluctance of the individual to whom the management of the national finances is chiefly entrusted be overcome, what we desire to impress upon the inquiring Commissioners is, that the public will derive no absolute gain from such a settle-

ment of the question. The burthen will be removed from the shoulders of those who ought never to have borne it, the suitors, to the shoulders of those who should bear it, the public; but the question still remains, are the public to pay for an institution which is inefficient and does not answer the purposes of its creation?

The constitution of the present Commission of Inquiry has been often adverted to in these pages. A majority of the Commissioners are distinguished lawyers, familiarly acquainted with the principles of the law of bankruptcy, and not ignorant of the mode in which it is administered. The law and its administration are alike unsatisfactory. It is for the Commissioners to suggest how the first may be improved, and the latter changed and simplified. The opportunity now afforded to amend the law and render its administration respected, cannot speedily and may never again occur. If the Commissioners of Inquiry are satisfied with suggesting how the present deficiency of income may be supplied, without reference to the causes from which the diminished business of the Court has arisen, no substantial service will have been done to the general community. Nothing is easier than to propose that the whole, or any part of the expenses of the present establishment should be charged upon the Consolidated Fund. No great difficulty, perhaps, would be found in cutting down the salaries and emoluments of some of the subordinate, or even some of the higher, officers of the Court of Bankruptcy, and by these means *squaring* the account of receipts and expenditure. But what the public justly complain of is, that a costly establishment is unfit for its purposes, and that, although the principle of the Bankruptcy law—the equal distribution of the estates of insolvent traders amongst all *bond fide* creditors—is universally acknowledged and approved, the jurisdiction established for giving effect to the principle is avoided, and other means resorted to for administering the estates of insolvent traders. If the Commission of Inquiry now constituted fails in suggesting the remedy for this anomalous state of things, let those of whom it is composed be assured the public will not feel they have performed any substantial service. By the failure of this attempt the mischief will be cemented and continued, if not perpetuated. It is not enough that Mr. A. should continue to receive his salary, or Mr. B. his pension, without abatement. What the public require, and are entitled to demand,

¹ The Act establishing the present Court of Bankruptcy is the 1 & 2 Will. 4, c. 56 (1831).

is, that the Court of Bankruptcy should furnish a cheap, efficient, and satisfactory machinery for adjudicating in cases of bankruptcy, and winding up the estates of bankrupt traders. If the promised report of the Commissioners of Inquiry recommends any *cobble*, anything short of throwing open the Court, and rendering it efficient and useful, the public disappointment will be proportioned to the confidence and respect entertained for the character of the Commissioners of Inquiry individually.

CHARITABLE TRUSTS.

ORDERS FOR REGULATING PROCEEDINGS IN THE COUNTY COURTS AND FOR FIXING THE FEES.

1. *Record.*—The clerk of every County Court shall keep a book, in the form in the schedule hereunto annexed, to be called "The Charitable Trusts' Book," in which a record shall be kept of all proceedings taken in that Court in matters of Charitable Trusts.

2. *Proceedings by private persons.*—When any person has obtained the required order or certificate from the Charity Commissioners, and he is desirous of taking proceedings in the County Court, he shall produce such order or certificate to the clerk, who shall retain and file the same in numerical order in his office, and the party producing such order or certificate shall be deemed the plaintiff in such proceedings; and the person served with a summons under Order 4, shall be deemed the defendant.

3. *Proceedings by Attorney-General.*—When the Attorney-General shall propose to take proceedings in the County Court, he shall cause to be delivered or transmitted to the clerk a written statement showing the nature and object of the proposed proceedings, and the clerk shall retain and file such statement in numerical order in his office, and the Attorney-General shall in such proceedings be deemed the plaintiff; and the person served with a summons under Order 4, shall be deemed the defendant.

4. *Summons.*—Upon the production of any order, certificate, or statement hereinbefore mentioned, the clerk shall, at the instance of the plaintiff, prepare a summons thereon in the form set forth in the schedule hereunto annexed, in which shall be stated the substance of the order, certificate, or statement, and he shall make as many copies thereof as there are parties required by the plaintiff to be summoned, and two additional copies, the one to be filed in the clerk's office, and the other to be transmitted to the Charity Commissioners.

5. *Notice to attend Proceedings.*—The clerk, if required by the plaintiff, shall prepare a notice to attend proceedings in the form set forth in the said schedule to be served on any persons indicated by the plaintiff, besides those

summoned under the last preceding order, and the said clerk shall make as many copies thereof as there are persons to whom such notice is to be given, and two additional copies, one to be filed in his office, and the other to be transmitted to the Charity Commissioners.

6. *Service of summons, and notice to attend proceedings.*—The clerk shall forthwith transmit by prepaid post letter a copy of the summons to each of the parties required to appear; and a copy of the notice to attend proceedings to each of the persons indicated by the plaintiff, and such transmission shall be sufficient service, unless the Judge shall otherwise direct.

7. *Notice of Hearing.*—Where the plaintiff does not require any summons or notice to attend proceedings to be issued, the clerk shall prepare a notice of hearing, in the form set forth in the said schedule, and two additional copies thereof, one to be filed in his office, and the other to be transmitted to the Charity Commissioners, and shall either deliver such notice to the plaintiff, or cause it to be served on him by pre-paid post letter, unless the Judge shall otherwise direct.

8. *Summons and notices to be issued in certain cases.*—In all cases it shall be competent for the clerk, if required by the plaintiff, to summon some persons, and to serve others with either or both of the said notices, or to serve a notice of hearing on the plaintiff, and a notice to attend proceedings on any other person.

9. *Judge's power.*—In all cases, it shall be competent for the Judge to direct what persons, or additional persons, shall be served with a summons or notice to attend proceedings or notice of hearing.

10. *Judge's note in ordinary cases.*—Upon the requisition of the Charity Commissioners, a copy of the Judge's note of the evidence taken at the hearing, or such part thereof as may be required by the Commissioners, shall be transmitted by the Judge to them at their office by post or otherwise.

11. *Judge's note where Attorney-General proceeds.*—Upon the requisition of the Attorney-General in proceedings instituted by him, a copy of the Judge's note of the evidence taken at the hearing, or such part thereof as may be required by the Attorney-General, shall be transmitted to him by post or otherwise.

12. *Copy of proceedings to be sent to Commissioners.*—A copy of the summons, notice to attend proceedings, notice to appear, together with a copy of the order made by the Court, shall in all cases be transmitted by the clerk, forthwith after the hearing, by post or otherwise, as the Judge shall direct, to the office of the Commissioners.

13. *Fees where income of Charity exceeds 10*l*.*—Where the annual income of the charity exceeds 10*l*., the Court fees shall be payable as in cases within the ordinary jurisdiction of the Court, without prejudice to the privilege of the Attorney-General as to costs, and the charitable funds may be made liable to the payment thereof, at the discretion of the Judge.

14. *Fees where income does not exceed 10l.*—Where the annual income of the charity does not exceed the sum of 10l., no fees of Court shall be payable out of the funds of the charity; nor shall any fees be paid by any party to the proceeding, unless the Judge shall, in his discretion, order any of the parties to the proceeding before him to pay such fees of Court as he shall think fit, without prejudice to the privilege of the Attorney-General as to costs.

15. *Fees how calculated.*—Where Court fees are payable, they shall be calculated according to the scale of fees applicable to proceedings for the recovery of tenements under the 9 & 10 Vict. c. 95, s. 122, the annual income of the charity, like the annual rent of the tenement, being treated as the basis of calculation.

16. *Income how determined.*—The order or certificate of the Commissioners, or statement of the Attorney-General, as to the amount of the annual income, shall be conclusive on the Court.

17. *Practice to continue, subject to these Orders.*—The enactments, Secretary of State's orders, practice, and forms in force and used in the County Courts shall, subject to the foregoing Orders, be adopted with reference to proceedings in matters of Charitable Trusts, so far as the same are applicable, *mutatis mutandis*.

18. *Power to revoke Orders reserved.*—The above Orders shall be in force, until further Orders shall be made under "The Charitable Trusts' Act, 1853," for regulating proceedings in the County Courts relating to Charitable Trusts.

Dated this 8th day of December, 1853.

CRANWORTH C.

CONSOLIDATION OF THE STATUTES.

REFERRING to our observations a few weeks ago (p. 23 *ante*), and the extracts then made from the Report of Mr. Coode, we now resume the subject of the Consolidation of the Statutes and propose to lay before our readers some further parts of the Report on the *modus operandi* of consolidation. The majority of the Profession is doubtless in favour of consolidation in preference to a code, and their opinion will be strongly confirmed by the learned Commissioner's statements and reasonings.

Consolidation, in Mr. Coode's view, is distinct from *Registry* and *Digestion* :—

"The first process, consisting merely of the ascertainment and registration of pre-existing facts, and requiring for its performance nothing more than patient and intelligent industry; the second, *Digestion*, requiring only practice in the analysis and methodical re-composition of

materials already provided, and in which contrivance, invention, knowledge of affairs, practical caution, sagacity, and political courage and public spirit—the legislator's necessary qualities—have no concern."

"By Consolidation, however, is understood that act of public power by which the materials of the pre-existing law are to be reconstructed and promulgated in that form in which they may be practically adapted to the circumstances and interests of the time."

"This process of Consolidation involves, not only the adoption of all the results prepared in the process of Digestion, and by which mere formal deficiencies, redundancies, inconsistencies, are displayed, and their amendment suggested as a mere logical consequent, but it involves also the responsible exercise of a discretion even in rejecting what is consistent, well expressed, and well methodized, for the sake of better practical provisions; as well as the adoption of new, perhaps unprecedented provisions, calculated to give greater efficiency to the old law, or even to bring into operation new expedients and principles of legislation. In short, whatever of the digested matter is to be retained, whatever is to be rejected, and whatever is to be superadded to it, must be determined upon grounds quite foreign to those upon which the best compilation of a Digest would be founded, namely, by a practical judgment requiring the use of all the qualifications of the able and experienced administrator, legislator, and practical statesman."

"To take an example from the Digest of the Poor Laws appended to the preceding paper; it displays in every page and in almost every paragraph some practical deficiency, some obvious redundancy, and within each paragraph, or between one and another, some want of consistency or some positive incongruity; but this Digest in all such cases only suggests that something is wanting or that something is in excess. To supply the deficiency, to prune the excess, to determine which of two parts shall be rejected and which retained, is in every case a practical question, requiring for settlement a practical judgment, and often a practical invention,—not a lawyer's, nor a jurist's, nor a compiler's function, but—the business of practical statesmanship.

"If such be the case with the smaller details, it is obviously still more so with the larger members of the subject. These involve questions which require ages of experience, discussion, deliberation, to dispose of. As whether the whole body of law or its principle shall be maintained or abrogated; or if the principle is to be maintained—whether it shall extend to all its present subjects the classes of poor now within its scope, limited only to some of them, or extended to others beyond its present scope. And these questions being determined upon principles or considerations of

policy,—whether the multitudinous and anomalous modes of relief authorised and accumulated during three centuries of varying experiment shall still continue authorised, of whether they shall be reduced to fewer modes, approved by practical experience, or increased by others suggested for adoption by practical sagacity. And these questions being determined,—whether the conditions, upon which relief is to be given and received,—the obligations and responsibilities attendant upon its receipt,—the discipline to be enforced and submitted to in its administration,—shall be retained, abandoned, or increased, to any and what extent. And having determined practically all these questions,—whether the mode of imposing the consequent obligation upon the community,—whether the persons subjected to the burden, or fewer or more, shall remain subjected to them, and contribute in respect of the means on which they are at present charged, or whether other means shall be brought into contribution. And all these things being practically determined,—whether the present mode of administration of the law in such localities, by such ministerial officers, with such superintendence, control, and direction, and with such remedies against the defaults of all, as are now provided, shall be, one or the other, to any greater or less extent abandoned or maintained or modified.

“All these questions, and hundreds like them, press daily on the consideration of the statesman, and when the whole subject is brought forward for consideration, it would not only be a plain abandonment of a great opportunity to neglect any occasion favourable for disposing of all these matters—of solving all these questions practically, according to the best lights and opportunities of the time; but it would doubtless be found an utter impossibility to pass a Consolidation through the stages of legislation, excluding the discussion of practical questions, and the adverse, if not the amicable introduction of substantial as well as formal amendments.

“This element of practical policy and statesmanship, necessarily and inevitably involved in the process of Consolidation, is one that can be submitted to no rule more precise or minute than the general principle of adopting on every occasion what may appear to be on that occasion the most useful practicable course; in other words, the field of operation is all human affairs in all circumstances,—the means of operation all human intelligence and power,—and the object the utmost attainable utility. These manifestly transcend all rules and all methods that can be laid down at any time by anticipation.

“But when the practical determination is in any case come to by any means whatever, the matter concluded comes again within the operation of the rules for expressing laws, and for preserving the relative connexion and order of their elements. Here the statesman's special function is at an end,—the simple principles of method and composition have undisputed and

undivided control. The function of the formal Compiler revives. And here it would appear that, in addition to many rules of smaller importance, there is one expedient of great importance for the realisation in the most complete and simple manner of this process of Consolidation.

Mr. Coode then remarks, that “Consolidation consists mainly in the replacement, in an improved expression, form, and order, in one synchronous enactment, of an indefinite series of distinct pre-existing laws, and as it comes into effect, the pre-existing laws which it replaces cease to have effect. The instantaneous and identical operation is, that as the one comes into force the others are defunct, and it would be to lose the chief benefit of Consolidation to leave any part of the previous law on the same subject still in operation. In other words, Consolidation of the law should imply an equivalent *Repeal of law.*” It is also contended in the Report, “that it is desirable to disencumber any Consolidation of the law of all matter that is *foreign* or unnecessary to it; and the Repealing Clause, which would generally be very cumbrous in connexion with any comprehensive Consolidation, would be a serious incumbrance if inserted in any act.”

“A good practice” (Mr. Coode adds) “has been adopted in many cases, of enacting the Repeals in Acts separately and distinctly from the consolidated or new enactments, as in the case of the Acts 3 G. 4. c. 41., and the four following chapters 42, 43, 44, 45; and of the 5 G. 4. c. 95, and the two following chapters 96 and 97; and of the 6 G. 4. c. 105, and the eleven following chapters; and of the 7 and 8 G. 4. c. 27, and the four following chapters; and of the 9 G. 4. c. 53. and the three following chapters; and of the 1 & 2 W. 4. c. 36, and the following chapter; and of the 14 and 15 Vict. c. 71, and the . . following chapters, and in other instances that it would be unnecessarily tedious to enumerate. The advantage of this course is, that the repealing Act and repealed Acts all sleep together, and need never again encumber the library, the law, or legislation.

“This practice should be invariably adopted, not only in formal consolidations, but on every occasion when any portion of the Statute Law, however minute, is formally repealed, or in effect superseded. This practice alone, consistently carried out, during the last thirty years would have relieved the statute book of three-fourths of its contents, and would have made the task of consolidation easy now to perform or easily to be dispensed with.”

¹ In the Poor Laws it would extend to 300 Articles and much minute and detailed expression.

NOTICES OF NEW BOOKS.

New and popular Edition of the Works of
SAMUEL WARREN, Esq., D.C.L., F.R.S.

ALTHOUGH we do not usually offer any comment on works strictly unconnected with the Law, we feel it a pleasing duty to make an exception in favour of the volume now before us, being the first of "The People's Edition of the Works of Samuel Warren."¹ We are entitled, however, to call the attention of our readers to the important Works of eminent Lawyers, on literary and scientific subjects,—the successful treatment of which may have conferred honour on the Professors of the Law, and more especially in the instance of the present Author, almost all of whose literary works bear directly or incidentally upon the administration of justice in this country. Thus, a recent work of Mr. Warren, his "Now and Then," comprised one of the most interesting criminal trials ever recorded, the result depending on a remarkable chain of circumstantial evidence. Again, his "Ten Thousand a Year," depicted the marvellous progress of an action for the recovery of a large entailed estate, the result of which depended on establishing an ancient pedigree, and involved many singular illustrations of the rules of evidence; and still more, setting forth to the life, the extraordinary skill, though often perverted ingenuity, of the attorney and the Nisi Prius advocate. Moreover, several of the "Passages" of *The Diary*, though written at an early period of the legal studies of the author, indicate the acuteness and eloquence for which he has been so distinguished, and refer, in many instances, to the course of legal proceedings and events connected therewith.

It is nearly a quarter of a century since the first appearance of "Passages from the Diary of a Physician." They were supposed by the public in general, to be the invention of a man who had long and extensively practised in the medical profession; and it was not until a question arose on the piracy of the copyright in the work, that Mr. Warren's name was disclosed as the sole author of the whole series. We learn from the Preface to the last and present Editions that Mr. Warren associated with medical men as one of themselves for several years, till the year 1827, when he quitted the study of medicine for that other great pro-

fession, to which he has ever since devoted himself. Our wonder at the skill and knowledge shown in the treatment of his patients by this medico-legal author, may be somewhat diminished by this insight into his early studies, but, on the other hand, we are the more satisfied of the truthfulness of the pictures which are presented to our view. It was scarcely necessary indeed that any apology should be made for errors of detail, unavoidable as they are in a work of such comprehension—errors disregarded by the public, who have been deeply impressed by the author's earnestness and honesty of purpose. The original text, therefore, has been left unaltered, familiar to the reader, and translated as it has been into many languages.

Looking at the position of Mr. Warren, as a member of the English Bar, he has wisely, in all his imaginative writings, aimed at the distinction which belongs to the MORALIST rather than the novelist. Every one of the twenty-eight Tales which have been wrought out of the "Passages from the Diary," abound with the most interesting facts and solemn reflections, calculated to instruct and elevate the reader, and Mr. Warren has evidently had ever present in his mind the words of Dr. Johnson, who says, "These familiar histories may perhaps be made of greater use than the solemnities of professed morality; and convey the knowledge of Vice and Virtue with more efficacy than axioms and definitions." Mr. Warren also bears testimony, as the result of the ample opportunities he has had of gravely and patiently watching society in all its different phases, "that human life and character, and all the incidents affecting them, can be contemplated safely, with instruction, and with true and enduring interest, only by the illumination of Christianity, for without it, everything looks, so to speak, upside down."

It has been said of this "Diary of a Physician," that it might be called "The Romance of Death." The author observes, that the expression was truly an unhappy one, and signally inapplicable, for there is no romance in death, but a tremendous reality. The steady purpose of the work has been to exhibit the course of life,—whether of the philosopher or the fool, the virtuous or the profligate, the high or the low,—and its close, as witnessed by the friend, the physician, and the divine. For an instance of the moral efficacy of the volume, we may mention that an excellent nobleman, since dead, was so much interested in the "Martyr

¹ Published in Parts, price 1s., by Blackwood and Sons.

Philosopher," that he requested permission to reprint it separately at his own expense for extensive circulation, declaring he should never forget the effect it produced on his own mind and heart.

NOTES ON RECENT STATUTES.

EQUITY JURISDICTION IMPROVEMENT ACT, s. 22. — REGISTRATION OF DEED IN ST. VINCENT.—CERTIFICATE OF REGISTRAR. PROOF OF SIGNATURE.

The Registrar of Deeds in the Island of St. Vincent had certified a deed as registered in the proper office there.

On an application to the full Court of Appeal to read the certificate without proof of the signature, the *Lord Chancellor* said, that the Court could only take judicial notice of the seal or signature of such persons as were, according to the definition in the 22nd section of the Act, 15 & 16 Vict. c. 86, "lawfully authorized to administer oaths," and it being admitted that the registrar in the present case had no such authority, the proof of his signature could not be dispensed with; and that the 14th section of the Law of Evidence Amendment Act (14 & 15 Vict. c. 99), only applied to copies of documents, while the question before the Court had reference to an original instrument. *Bailie v. Jackson*, 3 De G., M'N. & G. 38.

AFFIDAVITS SWORN IN AUSTRALIA BEFORE PASSING OF ACT.—VERIFICATION OF SIGNATURE.

Affidavits were sworn at Bathurst, in Australia, previous to the passing of the 15 & 16 Vict. c. 86: *Held*, that the affidavits were receivable, without proof of the Commissioner's signature. *Bateman v. Cook*, 3 De G., M'N. & G. 39.

POINTS IN COMMON LAW PRACTICE.

HABEAS CORPUS.—SERVICE.—RETURN.

A JUDGE's order for a writ of *habeas corpus cum causa* had been obtained by the wife against her husband to bring up the bodies of their children, and it appeared that the writ was served by leaving it with the brother and agent of the husband at the residence of the latter. It was objected that the service was insufficient, under the 56 Geo. 3, c. 100, s. 2.¹ But on its

appearing that the husband had instructed counsel to appear on the return, *Jervis*, C. J., held, that he had sufficient notice of the writ.

An objection was also taken on behalf of the wife against the Court's dealing with the return, in the absence of the husband, without an affidavit verifying it, and an opportunity being given to inquire into the truth of the matters alleged therein.

Jervis, C. J., said, "Upon inquiry, I find it is not necessary for the party to appear. And the case of *Leonard Watson and others* (the Canadian prisoners) 9 A. & E. 731; 1 Per. & D. 516, seems to show that the return must be taken to be true, and need not be verified by affidavit. It was doubted in that case whether there be any mode (other than by action) of impeaching the truth of such return, or of introducing new matter. I must confess I should have thought that it was competent to the party at whose suit the writ is obtained to impeach the return upon affidavit, or to traverse it and go to a jury, or to argue upon the return that it does not justify the detention." *In re Hake-will*, 12 Com. B. 223.

INNS OF COURT.

PUBLIC EXAMINATION.

Hilary Term, 1854.

THE Council of Legal Education have approved of the following Rules for the Public Examination of the Students.

The attention of the Students is requested to the following Rules of the Inns of Court:—

"As an inducement to Students to propose themselves for examination, Studentships shall be founded of Fifty Guineas per annum each, to continue for a period of three years, and one such Studentship shall be conferred on the most distinguished Student at each Public Examination; and further, the Examiners shall select and certify the names of three other Students who shall have passed the next best Examinations; and the Inns of Court to which such Students belong, may, if desired, dispense with any Terms, not exceeding two, that may remain to be kept by such Students previously to their being called to the Bar. Provided that the Examiners shall not be obliged to confer or grant any Studentship or Certificate, unless they shall be of opinion that the Examination of the Students they select has been such as entitles them thereto."

"At every call to the Bar those Students who have passed a Public Examination, and either obtained a Studentship or a Certificate of Honour, shall take rank in seniority over all other Students who shall be called on the same day."

"No Student shall be eligible to be called to the Bar who shall not either have attended during one whole year the Lectures of two of

¹ Which requires the service of such writ "either by the actual delivery thereof to him, her, or them, or by leaving the same at the place where the party shall be confined or re-

strained, with any servant or agent of the person or persons so confining or restraining."

the Readers, or have satisfactorily passed a Public Examination.

Rules for the Public Examination of Candidates for Honours, or Certificates entitling Students to be called to the Bar.

An Examination will be held in next Hilary Term, to which a Student of any of the Inns of Court, who is desirous of becoming a Candidate for a Studentship or Honours, or of obtaining a Certificate of fitness for being called to the Bar, will be admissible.

Each Student proposing to submit himself for Examination, will be required to enter his name at the Treasurer's Office of the Inn of Court to which he belongs, on or before Wednesday, the 4th day of January next, and he will further be required to state in writing whether his object in offering himself for Examination is to compete for a Studentship or other honourable distinction; or whether he is merely desirous of obtaining a Certificate preliminary to a call to the Bar.

The Examination will commence on Wednesday, the 11th day of January next, and will be continued on the Thursday and Friday following.

It will take place in the Benchers' Reading Room of Lincoln's Inn; and the doors will be closed ten minutes after the time appointed for the commencement of the Examination.

The Examination by printed Questions will be conducted in the following order:—

Wednesday Morning, the 11th January, at half-past Nine, on Constitutional Law and Legal History; in the Afternoon, at half-past One, on Equity.

Thursday Morning, the 12th January, at half-past Nine, on Common Law; in the Afternoon, at half-past One, on the Law of Real Property, &c.

Friday Morning, the 13th January, at half-past Nine, on Jurisprudence and the Civil Law; in the Afternoon, at half-past One, a Paper will be given to the Students including Questions bearing upon all the foregoing subjects of Examination.

The Oral Examination will be conducted in the same order, during the same hours, and on the same subjects, as those already marked out for the Examination by printed Questions, except that on Friday Afternoon there will be no Oral Examination.

The Oral Examination of each Student will be conducted apart from the other Students; and the character of that Examination will vary according as the Student is a candidate for Honours or a Studentship, or desires simply to obtain a Certificate.

The Oral Examination, and printed Questions, will be founded on the books below mentioned; regard being had, however, to the particular object with a view to which the Student presents himself for Examination.

In determining the question whether a Student has passed the Examination in such a manner as to entitle him to be called to the Bar, the Examiners will principally have regard

to the general knowledge of Law and Jurisprudence which he has displayed.

A Student may present himself at any number of Examinations, until he shall have obtained a Certificate.

Any Student who shall obtain a Certificate may present himself a second time for Examination as a Candidate for the Studentship, but only at one of the three Examinations immediately succeeding that at which he shall have obtained such Certificate; provided, that if any Student so presenting himself shall not succeed in obtaining the Studentship, his name shall not appear in the list.

Students who have kept more than ten Terms shall not be admitted to an Examination.

The Reader on Constitutional Law and Legal History will expect all Students to answer any general questions relating to the History of England, and to be well acquainted with the History of the Reigns of James the First, Charles the First, the Civil War, the Reigns of Charles the Second and James the Second.

The Candidates for distinction will be expected to know the progress of our Institutions, and the changes of our Constitution. They will be examined as to the details of the Parliamentary struggles, and of the State Trials during the above-mentioned Reigns; and also the progress of Constitutional Law. They will also be required to answer questions on the Treaties between this Country and the States of Europe during the same period.

The books for the ordinary Examination will be Hallam, Rapin, and Blackstone.

Those for the Candidates for distinction will be Hallam, Rapin, Burnet's History of his own Times, Sir W. Temple's Letters and Memoirs, Lord Clarendon's History and Life, May's History, and the State Trials.

The Reader on Equity proposes to examine in the following books:—

1. Mitford on Pleadings in the Court of Chancery; Fonblanque on Equity; Principal Cases in White and Tudor's Leading Cases; the Act for the Improvement of Equity Jurisdiction, 15 & 16 Vict. c. 86.
2. Spence on the Equitable Jurisdiction of the Court of Chancery, vol. i., part 2, book 1; Story's Commentaries on Equity Jurisprudence, vols. 1 and 2; White and Tudor's Leading Cases, vols. 1 and 2; Sir James Wigram's Points in the Law of Discovery.

Candidates for Certificates of Fitness to be called to the Bar will be expected to be well acquainted with the books mentioned in the first of the above classes.

Candidates for a Studentship or Honours will be examined in the books mentioned in the two classes.

The Reader on the Law of Real Property proposes to examine in the following books and subjects:—

1. Williams—Real Property.
2. Stephen—Comm., vol. i., book 2.
3. The Learning of Powers—Sagd. on Pow.,

chap. 1, sect. 1, 2, 4; chap. 2; chap. 3, sect. 2, 3; chap. 4; chap. 6, sect. 1.

4. The Statutory Alterations effected in the Law of Real Property from the commencement of the reign of William IV.
5. The Learning of Powers—Sugd. on Pow., chap. 6, sect. 9; chaps. 7, 8, 18.
6. Cruise, Dig., tit. xvi., "Remainders."

Candidates for a Studentship, or other honorary distinction, will be examined in all the foregoing books and subjects. Candidates for a certificate merely will be examined in 1, 2, and 3.

The *Reader on Jurisprudence and the Civil Law* proposes to examine on the following subjects:—

1. The Roman Law of Persons. The modern treatises referred to may be the *Institutiones* and *Commentarii Juris Romani Privati* of Warnkönig; and, on the subject of Tutelage, the *Pandekten* of Puchta.
2. The Roman Law of Criminal Process. The modern authorities consulted may be Laboulaye—*Lois Criminelles des Romains*; Plattner—*De Jure Criminum Romano*, Quæst. VI.; or Phillimore—Introduction to the Study of Roman Law, pp. 138, et seq.
3. The Conditions of Legislative Power. Austin—Province of Jurisprudence Determined, Lect. vi., pp. 197—296.
4. The Conflict and Harmony of Laws in the Interpretation of Foreign Contracts. Fœlix—*Droit International Privé*, pp. 136, et seq.; Story—Conflict of Laws, chap. viii.
5. The Rights and Duties of Neutrals. Wheaton—Elements of International Law, French ed., vol. ii., pp. 72, et seq.; English ed., vol. ii., pp. 132, et seq.

Candidates for Distinction will be examined in all the foregoing subjects: Candidates for a Certificate will be examined in 4, and also in 1, so far as the subject there indicated is treated of in the 1st Book of the Commentaries of Gaius, and in the Institutes of Justinian.

The *Reader on Common Law* proposes to examine in the undermentioned books and subjects:—

1. The Nature and Component Elements of our Common Law as set forth in Blackstone's (or Stephen's) Commentaries, vol. i., Introduction, sect. 3.
2. The Law of Contracts—so far as treated of in Smith's Lectures upon that subject—Lects. 1—5 inclusive.
3. The Common Law Procedure Act so far as it relates to:—

1. Writs for commencement of Actions, ss. 2—25.

2. Pleadings in general, ss. 49—57.

4. The Practice connected with the Indictment,—what it is, when and against whom it lies, and how found (Archbold's Criminal Pleading by Welsby, 12th edition, chap. 1, ss. 1, 2, and 7).
5. The Law as to Bailments in General (Story on Bailments, chap. 1).
6. The case of *Ashby v. White*, 1 Smith's Lead. Cas. 105, with the note thereto.

Candidates who desire a Certificate merely, will be examined in the 1st, 2nd, and 6th of the above subjects.

Candidates for the Studentship or for Honours will be expected to answer questions arising upon all the subjects and portions of books above specified.

By Order of the Council,

RICHARD BETHELL, *Chairman*.

Council Chamber, Lincoln's Inn,
2nd Dec., 1853.

CANDIDATES WHO PASSED THE EXAMINATION,

Michaelmas Term, 1853.

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &c.</i>
Andrews, Thomas, M. A.	Robert Henning Parr; Richard Weston Parr
Arnold, Harry	John Carnell
Arnott, James	William Wilson; John Clayton; William Dunn
Attree, Thomas Mill	Thomas Johnson
Badger, Henry Parkin	Thomas Badger
Banks, John Lewis	Septimus Booker
Barnard, George William	John Barnard
Bathurst, Henry	Richard Bathurst
Beale, Richard Francis Whatman	William Beale; Thomas Marlow; Jas. Kingsford
Bedford, Edwin	John Curtis
Billings, William, jun.	Thomas Ingram
Boydell, William Thomas	Samuel Boydell
Bradley, George	Charles Bulmer
Brassey, John	John Spenkman
Brown, Lancelot Charles	James Lennan
Bubb, Charles	John Bubb
Calthorp, Thomas Dounie	John Smith Rymer
Cleveland, Henry	Matthew Rackham
Cloves, William	William Nichol's Marcy; Frederick Robt. Partridge
Coates, John	Charles Savery
Cockerill, Thomas Marshall	Henry Heane; William Dean
Consedine, James	George Herbert Lewin; Geo. ge Cordwell

Names of Candidates.

Cooper, Douglas
 Daglish, William Stephen
 Davis, Hyman
 Edwards, Edward Webb
 Eyton, Peter Ellis
 Flewker, William
 Fox, Henry Atherton
 Gray, David
 Greathead, Joseph, B. A.
 Haire, John Kell
 Hampton, Charles James
 Harris, Edmund
 Héelis, William Hopes
 Hellings, Robert Wintle
 Henwood, Edward
 Hickin, John Warwick
 Higginson, Arthur
 Hill, Frederick Vivian
 Howes, Richard
 Hunt, Thomas
 Iles, John Arthur
 Jerwood, Richard
 Johnson William
 Judge, Thomas Edward Bristow
 Keighley, John Norman
 Langborne, Frank
 Lavender, George Henry
 Lawrence, Edward jun.
 Lloyd, Arthur Gore
 Lloyd, Richard George Davies
 M'Laren, Andrew
 Markby Alfred
 Marston, Percival
 Mercer, William
 Metcalfe, Arthur
 Millett, John jun.
 Minor, William
 Moseley, John Kent
 Murton, Alfred Charles
 Nash, James, jun.
 Newman, Edwin, jun., B. A.
 Nicholson, Richard Ward
 Nicholson, Steuart Fleming
 Norton, William South
 Oldaker, Charles
 Owen, Sackville Herbert
 Palmer, Philip Hitchen
 Pawle, John Christopher
 Pedley, Josbus, jun.
 Penfold, John Croucher
 Perry, James William
 Poncia, Thomas Francis
 Poole, John David
 Pratt, Walters Freak
 Proctor, Henry
 Randall, John Farr
 Ridley, Joseph James
 Roe, Josiah Stidder
 Sadler, Benjamin Greame
 Salisbury, Thomas Dodson
 Sanderson, William Barker
 Sharman, Matthew Reid
 Simmons, William Edward
 Simpson, William Henry
 Small, William
 Smith, Sidney, jun.
 Spencer, William
 Stephens, John Beeching
 Stubbs, Thomas James
 Thorn, Henry
 Tiplady, John, jun.
 Tomlinson, William Henry Bedford
 Tuson, George

To whom Articled, Assigned, &c.

John Martin Cooper
 William Lockey Harle
 Edward Walter Haines
 Robert Phippen Edwards
 James Eyton; Edw. Griffith Powell; Jas. Eyton
 John Flewker
 Henry Bury; John Bury
 Joseph Woodcock
 Wordsworth and Dunn
 Charles Spilman Todd
 Edward Lambert
 George Harris
 William Watson
 Robert Hawkins Hellings
 John Mackinson
 William Rathbone; William Moss
 Robert Edwards
 Frederick Hill
 William Harris; Nathaniel Mason
 William Oakes Hunt
 Francis William Calvert
 Thomas Walker
 Thomas Johnson
 Thomas Graham
 Thomas Dodd Keighley
 John Buchanan
 Charles Lewis Brett; Alex. Sharman; T. Wealey
 Thomas Plews
 William Hobbs
 Henry Bremner; George Henry Taylor
 William Fox Clark
 Thomas Borrett
 William Urwick
 John Jackson Blandy
 Charles Metcalf, jun.
 John Nicholas Richards Millett
 James Lane
 John Pike
 Augustus Charles Veley
 William Nichols Marcy
 Edwin Newman; Henry Seymour Westmacott
 Richard Nicholson
 James Garden Seton
 Silas Norton
 Edwin Ball
 William Herbert Owen
 Thomas Hitchen Palmer
 Wm. F. Walker; C. A. Brookfield; S. M. Cooper
 John Druce
 William Penfold
 John Welchman Whateley
 Edwin Wright
 Francis Short
 James Pratt
 Edward Fatvoye; George Henry Sawtell
 T. Randall; J. Murdoch; T. M. Wilkin; T. Randall
 Jackson Townsend
 William Henry Moberly
 Herbert George Goldingham
 John Sharp
 Richard Arthur Duffy; Charles Nixon
 David Simpson Morice
 John Holyoake
 Freeland and Raper
 Joseph Richardson; John Richardson
 Joseph Wheelock; Sidney Smith, sen.
 George Spencer
 Edward George Craig; Thomas Holme Bower
 Thomas Parker
 Bruges Fry; Edward Bromley
 John Tiplady
 John Marsden
 Henry Tuson

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &c.</i>
Tweddle, James Frederick	John Summerscales
Umbers, William Crowther	Thomas Umbers
Vaughan, James	William Fowler
Waddington, Granville Ferrers	Alex. Waddington; J. James, jun; A. Waddington
Wainwright, George William Reed	John Combe
Walker, Charles	Benjamin Terry; Richard Hird
Walker, Francis	Horatio Nelson Fisher
Webster, John Frederick	John Webster; Chas. Edw. White; Edw. White
West, Thomas	Stephen Walters
Woodman, Benjamin	William Woodman; Ralph Compton
Worley, Charles Rudsell	Thomas Oldman
Wright, Edward	Robert Hiorne Hobbes
Wright, Henry	Thomas Waterworth
Wyatt, Charles William	Charles William Potts; Hugh Beaver Roberts

LOCAL AND PERSONAL ACTS.

Declared Public, and to be Judicially Noticed.

16 & 17 VICT. 1853.

1. An act to consolidate the Stock and Powers of the Corporation of "The London Assurance of Houses and Goods from Fire" with the Stock and Powers of the Corporation of "The London Assurance," and to confer on the last-named Corporation the Powers of "The London Assurance Loan Company," and to give additional Powers to "The London Assurance."

2. An act for lighting with Gas the Town of Dudley and the Suburbs thereof.

3. An act to enable the Sunderland Corporation Gas Company to raise a further Sum of Money; and to amend and enlarge the Provisions of the Act relating to such Company.

4. An act to amend the Act relating to the Whittle Dean Water Company, and to enable such Company to maintain additional Works, for better supplying with Water the Inhabitants of the Boroughs of Newcastle-upon-Tyne and Gateshead, and certain Places adjacent and near thereto, in the counties of Northumberland and Durham.

5. An act for better supplying the Inhabitants of Bangor with Water.

6. An act to enable the Redruth and Chasewater Railway Company to construct new Works; and for other purposes.

7. An act to authorise the Bristol Waterworks Company to raise an additional Sum of Money by Loan; and for further amending "The Bristol Waterworks Act, 1846."

8. An act for incorporating the Ormskirk Gaslight Company.

9. An act to enable the Mayor, Aldermen, and Burgesses of the Borough of Carmarthen to provide and maintain a new Cattle Market Place and Slaughter-houses, to amend the Act for regulating the existing Markets in the said Borough, and for other purposes.

10. An act for the more equal Division of the Borough of Cork into Wards, and to provide for the better Constitution and Regulation of the Municipal Corporation of the said Borough; and for other purposes.

11. An act for lighting with Gas the Town of Nottingham, and certain Parishes and Places adjacent thereto.

12. An act for increasing the Capital and extending the Powers of the Devonport Gas and Coke Company, and for other purposes.

13. An act to repeal the Preston Gas Company's Act, passed in the Second Year of the Reign of Queen Victoria, and to make other provisions in lieu thereof.

14. An act to amend "The Norfolk Estuary Act, 1846," and "The Norfolk Estuary Amendment, Act, 1849."

15. An act for constructing and maintaining a Pier at Great Yarmouth, in the County of Norfolk, to be called "The Great Yarmouth Wellington Pier."

16. An act for empowering the Mayor, Aldermen, and Burgesses of the Borough of Evesham in the County of Worcester, to build and maintain a Bridge over the River Avon in the said Borough; and for other purposes.

17. An act for supplying the Inhabitants of the Town of Great Yarmouth and adjacent Places with Water.

18. An act for providing Waterworks and Gasworks for the Town of Lowestoft in the County of Suffolk, and for regulating the Market there, and for other purposes, of which the Short Title is "The Lowestoft Water, Gas, and Market Act, 1853."

19. An act to amend the Acts relating to the Dublin and Belfast Junction Railway Company, and for other purposes.

20. An act to enable the Crystal Palace Company to divert certain Roads and to purchase Lands; and for other purposes relating to the Company.

21. An act for amending the Provisions of certain Acts of Parliament relating to the Civil Court of Record of the Borough of Liverpool, and the Process, Practice, and Mode of Pleading in the said Court, and for extending the jurisdiction thereof.

22. An act for enabling the Company of Proprietors of the Sheffield Waterworks to extend their Works, and to obtain a further Supply of Water from the Rivers Rivelin and Loxley and their Tributaries, and for consolidating the Acts relating to such Company.

23. An act for supplying the Inhabitants of

the University and Borough of Cambridge and other Places adjoining thereto with Water.

24. An act for repealing an Act called "The Cardiff Waterworks Act, 1850," and granting other Powers in lieu thereof; and for authorising the Cardiff Waterworks Company to raise further Money.

25. An act for better supplying with Water the Parishes of Brighton, Hove, and Preston in the County of Sussex.

26. An act for amending the Provisions of existing Local Acts relating to the Borough of Stockport.

27. An act for discharging the Inhabitants of the townships of Wakefield, Alverthorpe-with-Thornes, Horbury, Stanley-with-Wrenthorpe, Sandal Magna, and Crigglestone, in the Parishes of Wakefield and Sandal Magna, in the West Riding of the County of York, from the Custom of grinding Corn, Grain, and Malt at certain Corn Mills in the said Townships of Wakefield and Horbury and Parish of Sandal Magna, and for making Compensation to the Proprietors of the said Mills.

28. An act for the further Improvement of the Borough of Wolverhampton, and for regulating the Markets therein, and for other purposes.

29. An act for better lighting, watching, and otherwise improving the Town of Blackpool and the rest of the Township of Layton with Warbrick in the County Palatine of Lancaster, and for other purposes, and of which the Short Title is "The Blackpool Improvement Act, 1853."

30. An act for the Improvement and Regulation of the Borough of Great Grimsby in the County of Lincoln; for better supplying the Inhabitants thereof with Water; for providing a new Burial Ground; for enlarging the Market Place; for making an Outfall for the Sewers of the Town; and for other purposes.

31. An act for supplying with Water several Townships and Places in the Parishes of Whalley, Bury, Radcliffe, Prestwich-cum-Oldham, and Bolton-le-Moors in Lancashire; and for incorporating the Bury and Radcliffe Waterworks Company.

32. An act for the Extension of the Boundaries of the Municipal Borough of Salford and otherwise improving the said Borough, and for other purposes.

33. An act to empower the Midland Railway Company to create new Shares or to grant Annuities for the Extinguishment of their Debenture Debt; and for other purposes.

34. An act to enable the Scottish Central Railway Company to convert their Mortgage and Bond Debt into Debenture Stock.

35. An act for making a Road or Street from the South End of Waverley Bridge Road, adjoining the General Railway Station at Princes Street, to the High Street in the City of Edinburgh.

36. An act for the Maintenance and Regulation of the Harbour of Teignmouth and the Navigation of the River Teign, and for other purposes.

37. An act for making a Canal from the Francis Dock, connected with the Duke of Bridgewater's Canal at Runcorn in the County of Chester, to join the Weston Canal or River Weaver Navigation at or near Weston Point in the same Parish, and to be called the Runcorn and Weston Canal.

38. An act to alter and amend the Provisions of "The City of Norwich Waterworks' Act, 1850," and to grant further Powers to the Company thereby incorporated.

39. An act for establishing a Corn Exchange and regulating the Markets in the Borough of Reading, and for other purposes, and of which the Short Title is "The Reading Corporation Markets' Act, 1853."

40. An act to increase the Capital and extend the Powers of Price's Patent Candle Company, and to consolidate the Acts relating to the Company.

41. An act for making a Railway from Chichester to Bognor.

42. An act for enabling the Mayor, Aldermen, and Burgesses of the Borough of Oldham in the County Palatine of Lancaster, to purchase and maintain Gasworks and Waterworks; and for other purposes.

43. An act for enabling the Shipley Gaslight Company to raise a further Sum of Money; and for extending the limits of their existing Act to the adjoining Township of Baildon.

44. An act to extend the Limits of the Blackburn Gaslight Company's Act for the Supply of Gas, and to authorise the raising of a further Sum of Money, and for other purposes.

45. An act to consolidate the Acts relating to the Leeds Gaslight Company, to authorise the Company to raise a further Sum of Money, and for other purposes.

46. An act for incorporating the Madras Railway Company, and for other purposes connected therewith.

47. An act for making certain Improvements in the River Severn, and for amending the Acts relating thereto.

48. An act for better supplying with Water the Borough of Preston in the County of Lancaster, and for authorising the Local Board of Health for the Borough of Preston aforesaid, to purchase the Preston Waterworks.

49. An act to enable the Edinburgh Water Company to raise a further Sum of Money; and for other purposes.

50. An act to enable the Dundee Water Company to construct additional Works for obtaining a further supply of Water; and for other purposes.

51. An act to authorise the Wakefield Borough Market Company to raise a further Sum of Money.

52. An act to authorise the Creation of Preference Stock by the Manchester, Sheffield, and Lincolnshire Railway Company in lieu of Debentures, and the Reduction, Division, and Consolidation into Stock of the Manchester and Lincoln Union Shares of the said Railway.

53. An act to repeal the Act for maintaining

the Turnpike Road leading out of the Alston Turnpike Road at Branch End in the County of Northumberland, through Catton, Alledale Town, and Allenheads, to Cows Hill in the County of Durham, and to make other provisions in lieu thereof.

54. An act for making a Railway from Lough Swilly in the County of Donegal to the River Foyle near the City of Londonderry.

55. An act to renew the Term and continue the Powers of an Act passed in the 7th year of the reign of his Majesty King George the 4th, intituled "An Act for more effectually repairing and improving the Roads leading from Picks Hill near the Town of Langport East-over in the County of Somerset, through High Ham, Ashcott, and other places, to Mears in the said County."

56. An act to enable the Mayor, Aldermen, and Citizens of the City of York to purchase the Undertaking of the Foss Navigation Company, and to execute Works for the sanitary Improvement of the said City; to alter the Tolls taken in the Cattle Markets and Fairs in the City; and for other purposes.

57. An act to extend and amend the Powers and Provisions of the "Portadown and Dungannon Railway Act, 1847."

58. An act to amend an Act passed in the 5th year of the reign of his Majesty King George the 4th, for granting certain Powers and Authorities to the Australian Agricultural Company, and to alter the Capital of the said Company.

59. An act for better supplying with water the Town or Village of Bacup and the Neighbourhood thereof in Lancashire.

60. An act to amend the Acts relating to the Great Northern Railway Company, to authorise an Increase of Capital, and for other purposes.

61. An act to consolidate and amend Three several Acts passed in the reign of King George the 3rd, for draining and preserving certain Fen Lands and Low Grounds lying in the South Level, Part of the Great Level of the Fens commonly called Bedford Level, and in the County of Cambridge, between the River Cam otherwise Grant, West, and the Hard Lands of Bottisham, Swaffham-Bulbeck, and Swaffham Prior, East; and for other purposes therein mentioned.

62. An act for more effectually repairing the Road from Gravesend to Wrotham, and from thence to Borough Green, all in the County of Kent.

63. An act for making a Railway from Dartford in the County of Kent to Farningham in the same County, to be called the Darent Valley Railway; and for other purposes.

64. An act for constructing a Market for the sale of Cattle and other Animals in the Borough of Ludlow in the County of Salop.

65. An act to amend the Acts regulating to the Drainage and Embankment of certain Lands in Lough Swilly and Lough Foyle in the Counties of Donegal and Londonderry.

66. An act for supplying with water the

Town of Weston-super-Mare in the County of Somerset.

67. An act for supplying the Borough of Wigan in the County Palatine of Lancaster with water, for the better Regulation of the Police therein; and for other purposes.

68. An act to enable the Belfast and Ballymena Railway Company to make a Railway from Randalstown to Cookstown: and for other purposes.

69. An act for enabling the North and South Western Junction Railway Company to construct a Branch to near Hammersmith, and to raise additional Capital; and for other purposes.

70. An act to authorise the Abandonment of a Portion of the Undertaking of the Thames Haven Dock and Railway Company, and to reduce the Capital of the said Company, and to enable the Company to sell Lands not required; and for other purposes.

71. An act for more effectually repairing the Roads from Warminster and from Frome to the Bath Road, and other Roads connected therewith, in the Counties of Wilts and Somerset, called or known by the Name of "The Black Dog Road Trust."

72. An act for enlarging and improving the Shire Hall of the County of Stafford; removing the Markets at the Back of the Hall, and providing other Market Accommodation in lieu thereof; erecting Rooms and Offices for the Town Council of Stafford; and for other purposes.

[To be continued.]

PROFESSIONAL LISTS.

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Appointed under the 16 & 17 Vict. c. 78, with dates when gazetted.

Bebb, Joseph, 12, Argyll Street, Regent St. Capes, George, 1, Field Court, Gray's Inn. Dec. 23.

Oliver, Thomas, 11, Old Jewry Chambers, London. Dec. 16.

Parker, Thomas. 18, St. Paul's Church Yard. Dec. 23.

Redpath, Henry Syme, 9, Old Jewry Chambers. Dec. 23.

Church, John Thomas, 9, Bedford Row, London. Dec. 27.

Reynell, John Griffiths, 10, Staple Inn, Holborn. Dec. 27.

Weeks, Henry, 12, Cook's Court, Lincoln's Inn.

COUNTRY COMMISSIONER TO ADMINISTER OATHS IN CHANCERY.

Ball, Charles, Chester. Dec. 27.

PERPETUAL COMMISSIONERS.

Appointed under the Fines and Recoveries' Act.

Dabbs, John, Stamford, in and for the parts

of Kesteven, in the County of Lincoln, also in and for the Counties of Northampton and Rutland. Dec. 2.

Farwell, Frederick Cooper, Wolverhampton, in and for the County of Stafford, Dec. 9.

Taylor, John Oddin, Norwich, in and for the City of Norwich, and County of the same City, also in and for the County of Norfolk. Nov. 22.

Twist, John Brown, Coventry, in and for the County of Warwick. Dec. 23.

Watts, Edward, Ilythe, in and for the County of Kent. Dec. 16.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From November 22nd to 23rd Dec. 1853, both inclusive, with dates when gazetted.

Carnsew, Henry, and John William White-lock, 4, Raymond Buildings, Gray's Inn, Attorneys and Solicitors. Nov. 29.

England, John, and Richard England, Kingston-upon-Hull, Attorneys and Solicitors. Nov. 25.

Haines, Edward Walter, and Samuel Haines, 16, Great Marlborough Street, Attorneys and Solicitors. Dec. 20.

Hanslip, Charles, William Thomas Manning, and Job Conworth, 12, Hatton Garden, Solicitors, Attorneys, and Parliamentary Agents (so

far as regards to the said William Thomas Manning). Dec. 23.

Marshall, George, and Frederick Marshall, Plymouth, Attorneys and Solicitors. Nov. 25.

Mullins, Charles, and Charles William Corke, Chew Magna, Attorneys and Solicitors. Dec. 13.

Robinson, William, and George Robinson, Lancaster, Attorneys and Solicitors. Dec. 6.

Sewell, Robert Burleigh, Charles Wyatt Estcourt, and John Anthony Dodd Waile, Newport, Isle of Wight, Attorneys and Solicitors (so far as regards the said Robert Burleigh Sewell and John Anthony Dodd Waile). Nov. 25.

Vizard, William, and James Leman, 51, Lincoln's Inn Fields, Attorneys, Solicitors, Conveyancers, Money Scriveners, Auditors, and Receivers. Dec. 2.

Wilson, Robert, William Frederick Harrison, and Ebenezer John Bristow, 1, Cophall Buildings, City, Solicitors (so far as regards the said William Frederick Harrison). Nov. 29.

NOTES OF THE WEEK.

SCOTCH LAW APPOINTMENT.

The Queen has been pleased to appoint Robert Macfarlane, Esq., Advocate, to be Sheriff of the Shire or Sherifdom of Renfrew.—From the *London Gazette* of 24rd Dec.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

In re Pennant and Craigwen Consolidated Lead Mining Company, ex parte Fenn. Dec. 21, 1853.

RE-HEARING, WITH ASSISTANCE OF COMMON LAW JUDGES, OF APPEAL HEARD BY LORDS JUSTICES.

An application to the Lord Chancellor to rehear, with the assistance of two Common Law Judges, an appeal from Vice-Chancellor Stuart, which had been heard before the Lords Justices, was directed to be made to their Lordships with such assistance, in order to prevent the expense of an appeal to the House of Lords.

THIS was an application, on behalf of the official manager of the above company, to rehear this appeal from the decision of Vice-Chancellor Stuart, with the assistance of two Common Law Judges, in order to save the expense of an appeal to the House of Lords. It appeared that the Master had placed Mr. Fenn on the list of contributories, and that the Vice-Chancellor Stuart had affirmed such decision, but that the Lords Justices had referred the matter back for further information, and had ultimately removed the name, with costs (reported ante, vol. 46, p. 417).

Malins and Rosburgh in support; *Selwyn* for Mr. Fenn, contra.

The Lord Chancellor said, the matter had come before the Lords Justices as an original motion, and an application must be made to their Lordships to rehear the matter with the assistance of the Common Law Judges, for the reasons now given.

Lords Justices.

M'Neillie v. Acton. Nov. 16, 17, 1853.

WILL. — CONSTRUCTION. — DIRECTION TO TRUSTEES TO CARRY ON TRADE. — POWER TO CHARGE REAL ESTATE.

A testator by his will directed his executors and trustees to carry on his trade as a coal proprietor for the remainder of his interest in certain mines, and he also charged his real and personal estate with payment of his debts, and funeral and testamentary expenses. His widow, who was sole acting executrix and trustee, on the disclaimer of H., paid off a mortgage debt due to the plaintiff, and the deeds were re-delivered, but there was no conveyance. She afterwards deposited the deeds with the plaintiff to secure an advance to carry on the colliery: Held, on appeal from Vice-Chancellor Stuart that such charge was not authorised by the will.

The testator, Mr. Bullock, by his will, di-

rected his executors and trustees to carry on and continue his trade or business as a coal proprietor during his present interest in the mines taken by him, and that they should not be responsible for losses except such as arose from their wilful act or default. He also gave an annuity to his wife for life, and after charging all his real and personal estate generally with payment of his debts and funeral and testamentary expenses, he devised the same in trust for his son with remainder to his wife in fee, if he should die under the age of 21. A sum of 1,500*l.* was due under a mortgage to the plaintiff on the death of the testator in 1844, and this amount was discharged by the widow, who was sole acting executrix and trustee on the disclaimer of Mr. C. Hilton, and the deeds were re-delivered, but there was no reconveyance. In May, 1848, a sum of 840*l.* was advanced by the plaintiff to the executrix and trustee who had married Mr. Acton, for the purpose of carrying on the colliery, and the title-deeds were again deposited with the plaintiff. This suit was instituted for an account of what was due on such equitable mortgage, and for payment on a reconveyance of the estate being executed by the plaintiff, or in default, for a sale.

The Vice-Chancellor *Stuart* having made a decree as sought, this appeal was presented.

Bacon and *Osborne* for the plaintiff; *Elmsley* and *J. V. Prior* for the defendants and appellants; *W. M. James, Bond*, and *Kerslake* for other parties.

The *Lords Justices* said, that under the will the real estate was charged with debts and the trustees were empowered to sell or mortgage it for the payment of the same, but they were not authorised to deal with the real estate for the purpose of carrying on the trade, but the expenses must be borne out of that part of the estate which constituted the capital of the trade, and the appeal would therefore be allowed.

Master of the Rolls.

In re Barrow, ex parte Abraham. Nov. 24; Dec. 3, 1853.

MORTGAGOR AND MORTGAGEE.—TAXATION OF MORTGAGEE'S SOLICITOR'S BILL OF COSTS AFTER PAYMENT.—IMPROPER ITEMS.

The mortgagee's solicitor had prepared, but not filed, a bill to foreclose, pending the six months' notice to pay off the mortgage debt, on the alleged ground the mortgage had distrained for rent on the tenants, and he refused to receive the mortgage debt except on payment: Held, that as the foreclosure bill was improperly prepared, and he could not recover the costs thereof even as against the mortgagee, the interest not being in arrear nor the principal being in danger, the mortgagee was entitled to tax his bill after payment.

It appeared that on Mr. Abraham being desirous of paying off a mortgage on certain

freehold property, and on an appointment being made for the purpose, the bill of costs of the mortgagee's solicitor was objected to, and, on a taxation, was considerably reduced. The mortgagee's solicitor then applied for another appointment to pay the mortgage debt and interest, together with the amount of such costs as taxed, but the mortgagee's solicitor declined to receive the mortgage debt, and six months' notice was thereupon given for payment thereof in the usual course, the costs being paid. At the expiration of that period a fresh bill of costs was delivered, which included certain items in respect of a bill of foreclosure prepared in consequence of the mortgagor having distrained for rent on the tenants, but it had not been filed. These items were objected to, but were paid on the mortgagee's solicitor refusing otherwise to accept the debt, whereupon the mortgagor presented this petition for a taxation.

R. Palmer and *Dickinson* in support; *Follett* and *Kinglake* contra.

Curr. ad. vult.

The *Master of the Rolls* said, that the preparation of the bill was improper, as there was no interest in arrear, and the principal and interest were in no danger, and the charges in respect thereof could not have been enforced, in accordance with *in re Clark*, 1 De G. M. & G. 43, even against the mortgagee, as he had been improperly advised by his solicitor, and an order must be made for a taxation as prayed.

Vice-Chancellor Kindersley.

Bailey v. Tindall. Dec. 17, 21, 1853.

SUCCESSION DUTY ACT. — SETTING APART SUM TO MEET DUTY ON TENANT FOR LIFE RELINQUISHING INTEREST IN FAVOUR OF REMAINDER-MAN.

*A tenant for life in a fund of 3,500*l.*, relinquished his interest in favour of his son, who was entitled on his death. A sum of 50*l.* was ordered to be set apart to meet the succession duty under the 16 & 17 Vict. c. 51, s. 53, and for the son to give a personal undertaking for payment of the duty: but on the recommendation of the Legacy Duty Office, order for compounding duties under s. 39, on the parties consenting.*

This was an application under the 16 & 17 Vict. c. 51, s. 53, for an order to set apart 1*l.* per cent. to answer the succession duty, out of a fund in Court amounting to 3,500*l.*, which the tenant for life was willing to relinquish in favour of his son, who would be entitled thereto on his death.

By s. 15 it is enacted, that "where the title to any succession shall be accelerated by the surrender or extinction of any prior interests, then the duty thereon shall be payable at the same time and in the same manner as such duty would have been payable if no such acceleration had taken place." And by s. 53, that "whenever any suit shall be pending in any

Court for the administration of any property chargeable with duty under this Act, or the Legacy Duty Acts, such Court shall provide, out of any property which may be in the possession or control of the Court, for the payment of duty to the Commissioners."

G. Lake Russell in support.

The Vice-Chancellor said, the Commissioners were entitled to payment in money, and as it was impossible to say with certainty what a specific amount of stock set apart would produce, an order would be made to set apart 1*l.* 10*s.* per cent. (say 50*l.*) and for the party to give a personal undertaking for the payment of the duty.

This case was again mentioned on the receipt of a communication from the Legacy Duty Office, stating that the set-apart fund would be probably lost sight of, when the duty became payable, and be lost to the Crown, and suggesting a composition under s. 39 of the Act.

The Vice-Chancellor said, that this course was entirely at the option of the parties, both being *sui juris*, and that on their consenting the order might be varied accordingly.

In re Skinner's Trust. Dec. 20, 1853.

TRUSTEES' ACT, 1850.—VESTING ORDER OF REAL ESTATE IN PURCHASER.—RENUNCIATION OF TRUSTEE AFTER DEATH OF CO-TRUSTEE.—DISCLAIMER.

Two trustees were appointed under a will, one of whom renounced after his co-trustee's death, but without disclaiming. On petition under the 13 & 14 Vict. c. 60, an order was made vesting the real estate in a purchaser; and held that such purchaser, who had also contracted for the purchase of the personally, could, if necessary, sue thereupon for the same.

THIS was a petition for the appointment of new trustees, and for a conveyance to the purchaser by the devisees of a deceased trustee, appointed by the testator, together with another gentleman who had renounced after the death of his co-trustee, but not disclaimed.

C. Chapman Barber in support, on an affidavit by the other trustee that he had renounced and that he now disclaimed.

Torriano for the representatives of the deceased trustee.

The Vice-Chancellor said, that a vesting order under the 13 & 14 Vict. c. 60, would obviate the difficulty as to the real estates, and that the purchaser, who had also contracted to purchase the personally, could then sue for the same if necessary.

Vice-Chancellor Stuart.

Sillitoe v. Sillitoe and others. Dec. 14, 1853.

SPECIFIC DEVISE OF LAND SUBJECT TO VOID CHARITABLE BEQUEST.—INVESTMENT OF CHARITY FUND.

A testatrix devised all her real estates at N.

*to her executors beneficially, and requested them to convey part thereof on which she had erected four almshouses in trust for four poor widows. She also directed 2,500*l.* to be raised,—1,500*l.* to be applied for their maintenance, and the remainder to be paid to the incumbents of three parishes named: Held, that as the charitable bequest of the almshouses was void under the Statute of Mortmain, the executors took free therefrom as specific devisees. And the sum of 1,000*l.* was directed to be invested, and the dividends to be paid to the incumbents on their undertaking to apply the same on the trusts of the will.*

THE testatrix, by her will, devised all her real estates at Noneley, Shropshire, to her executors beneficially, and stated that on a part of the same called Salter's Croft, she had erected four almshouses, and then requested her executors to convey the same on trust for four poor widows belonging to the parish of Loppington, to reside therein; and, after directing a sum of 2,500*l.* to be raised, of which 1,500*l.* was to be applied for the maintenance of the four widows, and the remaining 1,000*l.* to be paid to the incumbents of Drayton in Hales, Shropshire, and two adjoining parishes, to be applied for the benefit of the poor in their respective parishes, she gave to the plaintiff the residue of all her real and personal estate. This suit was instituted as to whether Salter's Croft passed to the plaintiff or to the executors, the charitable bequest being void under the Statute of Mortmain.

Swanston and *Horace Wright* for the plaintiff; *Elmsley*, *Glasse*, *Welford* and *Hobhouse* for the several defendants; *Wickens* for the Attorney-General.

The Vice-Chancellor said, that the executors were entitled to Salter's Croft as specific devisees, subject to a void charitable trust, and directed the sum of 1,000*l.* to be invested, and the dividends to be paid to the several incumbents, on their undertaking to apply the same in accordance with the trusts of the will.

Chapman v. Edgar. Dec. 2, 1853.

ADMINISTRATION CLAIM.—SPECIALTY AND SIMPLE CONTRACT CREDITORS.—ANSETS.

A testator by will before the Wills' Act, devised all his estate and effects in trust for payment of his debts. On his death in 1852, after having purchased other real estate, and considerably indebted: Held, on an administration claim by a simple contract creditor that the specialty creditors in order to participate in the trust must bring into hotchpot the after purchased estates which descended to the heir-at-law.

THE testator by his will, dated in the year 1829 (and before the Wills' Act, 7 W. 4, and 1 Vict. c. 26), devised all his estate and effects in trust for the payment of his debts, and he afterwards purchased certain real estates, and died in 1852, considerably indebted, whereupon

this claim was brought by a simple contract creditor, for the administration of his estate. The specialty creditors were not made parties, but had obtained leave to attend on the hearing.

Cotton in support; Malins and Prendergast for the specialty creditors.

The Vice-Chancellor said, that the specialty creditors were not entitled to participate in the trust without bringing into hotchpot the after acquired real estate, which descended to the heir-at-law.

Vice-Chancellor Maub.

Hartridge v. Austen. Nov. 9, 10, 1853.

SUIT BY LEGATEES AGAINST EXECUTOR FOR ACCOUNT.—BENEFIT OF RENEWED LEASE.

Where an executor carried on a farm jointly with his testator, and it was arranged, upon the understanding the lease would then expire, that a renewal should be made to them jointly, and afterwards and before its expiration the testator died, and his executor carried on the farm, and at the end of the term purchased the stock at a valuation and obtained a renewal to himself alone: Held, that the legatees were entitled to an account and to the benefit of the renewed lease.

This bill was filed by the legatees of a testator against the executor for an account, and claiming to be entitled to the benefit of a renewed lease of a farm, which he had carried on jointly with the testator. It appeared negotiations had been entered into with the lessor for a renewal of the lease to the two, in the supposition it expired in 1848, but that on it being discovered that it would only expire at Michaelmas, 1849, it was arranged a renewal should be then made. The testator, however, had since died, and the defendant, as his executor, carried on the farm, and in Michaelmas, 1849, he purchased the stock at a valuation, and obtained a renewal of the lease to himself.

Daniel and Greene for the plaintiffs; *Rolt and W. Hislop Clarke* for the defendant.

The Vice-Chancellor said, the plaintiffs were clearly entitled to the benefit of the renewed lease, but it would be well for them to consider whether it would be beneficial to them, as they would have to indemnify the defendant against any future breaches of the covenants. There would be an account to ascertain the value of the stock and effects and the amount of profit made by the defendant,—the costs of the suit relating to the lease and the employment of the stock to be borne by the defendant, and the rest of the costs to be reserved.

Lacklan v. Reynolds. Nov. 17, 1853.

SALE UNDER DECREE.—MISREPRESENTATION OF PARTICULAR AS TO TENANT.—DISCHARGE OF PURCHASER.

A house was put up for sale under a decree, with a particular stating it to be "at present in the occupation of Mrs. Clarke, at a rental of per annum, 42l." It was dis-

covered on a sale and after orders nisi and absolute confirming the same, and payment of the purchase-money into Court, that Mrs. Clarke's tenancy was under a person who had illegally obtained possession, and that an action would be necessary: on motion the purchaser was released from the contract.

It appeared that a house was put up for sale by direction of this Court, under a particular stating it to be "at present in the occupation of Mrs. Clarke, at a rental of per annum, 42l.," and that the same might be viewed by permission of the tenant. On the house having been purchased by Mr. Biffin, and the deposit duly paid, and the report of the purchase confirmed by orders nisi and absolute, and the balance of purchase-money paid into Court, it was discovered that the tenant's occupation was under a person who had illegally obtained possession of the premises, and that it would be necessary to bring an action to recover possession. This motion was thereupon made for the discharge of the purchaser from the contract and repayment of the deposit with costs.

Bacon and Horsey in support, citing *Calvert v. Godfrey*, 6 Beav. 97.

Baily, Q. C., contra.

The Vice-Chancellor said, that as the vendors were aware the tenant was in occupation adversely, and had represented it as the possession of their own tenement, there was such a want of good faith as entitled the purchaser to be relieved from his contract, and it was not a case for mere compensation for delay in obtaining possession.

Long v. Storie. Dec. 2, 1853.

EQUITY JURISDICTION IMPROVEMENT ACT.—MOTION UNDER S. 44, FOR APPOINTMENT OF REPRESENTATIVE IN SUIT.

In a foreclosure suit, in which a decree had been made, the party entitled to redeem had died intestate, and a creditor was prevented obtaining letters of administration by the caveat entered by the other creditors. The Court refused a motion under the 15 & 16 Vict. c. 86, s. 44, for the proceedings to go on, or to appoint a representative of the estate, but with leave to apply again on an affidavit of the creditor's consent to administer, and on notice to the creditors entering the caveat.

This was a motion under the 15 & 16 Vict. c. 86, s. 44, for the proceedings in this foreclosure suit, in which a decree had been made, to go on, or for the appointment of a person to represent the estate of one Hoare, who had died intestate, and in whom the right to redeem had been vested on the default of the first party entitled. It appeared that Mr. Ivimey, a creditor, had applied for letters of administration on the next of kin failing to administer, but that the other creditors had entered a caveat before the letters which were decreed had been perfected.

Bazalgette for the plaintiff in support.

The Vice-Chancellor said, the Act was intended to apply to cases where administration could only be obtained with difficulty, and not to a case like the present, where letters would be obtained shortly by the creditor, and the motion would therefore be refused, but with leave to apply again on an affidavit of Mr. Ivimey's consent to administer, and on notice to the creditors entering the caveat.

Maries v. Maries. Dec. 7, 9, 1853.

SOLICITOR FILING BILL ON BEHALF OF PLAINTIFF WITHOUT WRITTEN AUTHORITY.—ORDER TO AMEND.—COSTS.

Where a solicitor had filed a bill making a party a plaintiff without his written authority, and there had been no subsequent acquiescence, and the only defendant who had appeared waived his costs as against such plaintiff, an order was made to amend the bill on or before the first day of the following Term by striking out such name and making him a defendant,—the solicitor to pay the costs of the motion and consequent thereon.

THIS was a motion on behalf of Mr. James Maries, one of the plaintiffs in this suit, to strike his name off the record, with costs as against the solicitor filing the bill, on the ground no authority had been given by him. The only one of the defendants who had appeared to the bill waived his costs as against this plaintiff.

Baggally, in support, cited *Allen v. Bone*, 4 Beav. 493.

Bagshawe for the solicitor, contra.

The Vice-Chancellor said, that the onus of proof laid on the solicitor, who was bound to obtain the written authority of his client to institute proceedings. In the present case, there had been an unusual want of caution, as the solicitor, although in the first instance he appeared to consider a written authority necessary, had afterwards inserted the plaintiff's name on the statement of other parties he might so do, and there was no subsequent acquiescence made out. An order would, therefore be made to amend the bill on or before the first day of next Term, by striking out the applicant's name as a plaintiff and making him a defendant,—the costs of this motion and consequent thereon, to be paid by the solicitor filing the bill.¹

In re Colson's Estate. Dec. 9, 1853.

DEVISE OF ESTATES IN TAIL, WITH PROVISION AGAINST CUTTING TIMBER.—FUND APPLICABLE TO REPAIRS.—BARRING ENTAIL.

On a devise of two estates to the testator's two sons for terms of 99 years, if they

should so long live, in strict settlement, and with a prohibition against cutting timber: Held, that they were thereby entitled to a sum which was given in trust to apply the dividends for necessary repairs during a term of 60 years, if the rules of law would so long permit, but if not, then for 21 years after the survivor's death—the surplus to be divided equally among the persons entitled to the estates for the time being, and the capital, after the expiration of the trust, to be divided in like manner.

MR. COLSON, by his will, devised two estates to his sons John and James, for terms of 99 years, if they should so long live, with remainders to their first and other sons successively in tail male, with remainders over, but with a proviso against cutting timber thereon for any purpose whatever. A sum of 2,000*l.* was also given to the trustees in trust, to apply yearly such part of the dividends thereon as might be necessary to repair the buildings on the estates, during a term of 60 years, if the rules of law would so long permit, but if not, then during the lives of his two sons and the survivor of them, and for the period of 21 years after the death of the survivor. The trustees were directed to pay the surplus income in equal shares to the persons entitled for the time being to the estates, and on the expiration of the trust, they were to divide the capital in like manner, provided the parties in possession were the testator's sons or their descendants, but if not, then equally among their descendants of his brothers and sisters then living *per capita*. It appeared the sons had barred the estate tail, and this petition was now presented for a declaration, that the trust was determined, and for payment out of Court of the 2,000*l.* which had been paid in, under the 10 & 11 Vict. c. 96, and it had been served on two descendants of each son, and on two descendants of each of the brothers and sisters.

Bagshawe in support.

Giffard and *Keene* for the other parties.

The Vice-Chancellor said, that as the parties who took the estate had made themselves absolute owners, the trust on which the fund had been given had expired, inasmuch as the clause restraining the cutting of timber was inoperative, and they were therefore entitled to an order as prayed.

Roberts v. Eberhardt. Dec. 13, 1853.

ATTORNEYS.—DISSOLUTION OF PARTNERSHIP AND EXCLUSION FROM OFFICES.—INJUNCTION AND RECEIVER.

The plaintiff and defendant were in partnership as attorneys, but no articles had been entered into, and the business was carried on at offices attached to the defendant's residence, the rent being paid half-yearly out of the partnership assets. On disputes having arisen, the defendant served notice of an immediate dissolution, and refused to allow the plaintiff access to the office: Held, that as the accounts were not settled

¹ See also *Wiggins v. Peppin*, 2 Beav. 403; *Wright v. Castle*, 3 Mer. 12; *Wade v. Stanley*, 1 Jac. & W. 675.

and the business wound up, an injunction would be granted to restrain such exclusion from the offices, and a receiver appointed.

In this case it appeared that the plaintiff and the defendant were in partnership as solicitors at Stourbridge, but that no articles had been entered into between them—the business being carried on in offices attached to the defendant's residence, and the rent being paid half-yearly out of the partnership assets. The defendant had, upon disputes having arisen, served the plaintiff with notice of an immediate dissolution of the partnership, and had erased his name from the offices, and refused to allow him to have his papers remain there, or to have access thereto. It further appeared that the accounts had not been settled, and that there was a question as to whom a balance was due. This motion was now made therefore for an injunction to restrain the defendant from excluding the plaintiff from the offices, and for the appointment of a receiver and manager.

Bacon and J. V. Prior in support; *Rolt and Cairns*, contra.

The Vice-Chancellor said, the defendant could not be permitted, even though the partnership were at will, to dissolve the partnership and eject the plaintiff from the offices, so long as the business was not wound up, and until such was the case the plaintiff was entitled to be on an equal footing with the defendant, and an injunction was therefore granted and a receiver appointed.

Potts v. Warwick Canal Company, ex parte Gibbins and others. Dec. 12, 14, 1853.

PETITION OF JUDGMENT CREDITOR TO ISSUE ELEGIT, WHERE RECEIVER APPOINTED.—ORDER.—COSTS.

Where, in a suit by the mortgagees of the rates, &c., of a canal company, a receiver had been appointed, an order was made on the petition of a creditor, who had obtained judgment in an action previously commenced, for liberty to issue an elegit on the lands, but without prejudice to the rights of the receiver—the creditor's costs to be added to his debt and those of the plaintiff to his mortgage—the company to have no costs against either creditor.

In this suit by the mortgagees of the rates, tolls, and dues of the above company, a receiver had been appointed. A petition was now presented on behalf of a creditor who had subsequently obtained judgment in an action previously commenced to recover a debt from the company, for payment thereof by the receiver, or for liberty to the petitioner to sue out execution at law under the judgment, which had been duly registered, on the goods and chattels of the company, and sue out and execute an elegit on their lands.

Rolt in support; *James and Jolliffe* for the plaintiff did not oppose, provided the petitioner did not interfere with his security; *Glassey and Baggallay* for the company, asked for costs.

The Vice-Chancellor said, that an order would be made for the petitioner to be at liberty to issue an elegit, but without prejudice to the rights of the present or any subsequent receiver—the petitioner's costs to be added to the amount of his debt and those of the plaintiff to his mortgage—the company to have no costs as against these creditors.

Roberts v. Eberhardt. Dec. 13, 14, 1853.

MINING CO-PARTNERSHIP.—APPOINTMENT OF RECEIVER, WHERE DISSOLUTION NOT PRAYED BY BILL.

An order for the appointment of a receiver of a mine was refused without costs, on the motion of one tenant in common against the other, where it appeared the plaintiff was the practical manager, and that the defendant had not interfered in respect of the management, and where the bill did not ask for a dissolution of the partnership and for a sale.

In this suit for the appointment of a receiver of a mine called Tipton Colliery, it appeared that the plaintiff and defendant were entitled thereto in equal moieties as tenants in common, and that it had been carried on by them jointly, the expenses being paid out of their partnership assets as solicitors, the plaintiff being the practical manager. The bill did not ask a sale or dissolution of the working partnership.

Bacon and J. V. Prior for the plaintiff, cited *Jefferys v. Smith*, 1 Jac. & W. 298, and offered a sale or dissolution.

Rolt and Cairns for the defendant.

The Vice-Chancellor said, no case could be found where a receiver and manager of a mine had been appointed, except where the parties were actually working together, or a dissolution were prayed by the bill. The two cases where a receiver would be appointed appeared to be: 1st, where parties (as in the case of a mine descending to co-heiresses) were jointly interested in a mining concern, not taken for purposes of trade, and they agreed to work it together; and 2ndly, where the property was a partnership concern for purposes of trade, and a dissolution was asked by the bill. In the present case the only object would be for the purposes of continued operations, and no actual interference by the defendant in respect of the management was made out by the plaintiff, who seemed to have the whole thing in his hands, and merely alleged there was a want of co-operation on the defendant's part. No order would therefore be made, but each party would bear his own costs.

Court of Queen's Bench.

Howard v. Remer. Nov. 15, 1853.

COUNTY COURT.—APPEAL.—PLAINT FOR ILLEGAL DISTRESS UNDER TITHE COMMUTATION ACT.—NOTICE.—PARTICULARS OF DEMAND.

An appeal was allowed with costs from the

decision of the Judge of a County Court, in a plaint to recover for an illegal distress under the Tithe Commutation Act (5 & 6 Vict. c. 54), where a technical objection had been allowed that the notice of action under s. 19 did not include some of the particulars of demand.

THIS was a plaint in the Congleton County Court, for an illegal distress, under the 5 & 6 Vict. c. 54, and on the trial an objection was taken to the admission of evidence in support of certain particulars of demand, on the ground they were not included in the notice of action required by s. 19, which was for entering on the plaintiff's premises and seizing three heifers, and continuing thereon for several days, and for seizing and selling three other beasts. The particulars objected to were, for having sold after the distress was abandoned; for not having paid over the surplus to the plaintiff, and for extortion in the charges. The defendant having obtained a verdict under the direction of the Judge,

Watson and Willes appeared in support of this appeal from his decision; *Welsby* contra.

The Court said, it was desirable cases in the County Courts should be decided on their real merits, and that the notice of action under s. 19, was to be construed liberally, and it was therefore sufficient, as the particulars objected to were not in consequence of the distress which had been abandoned, and the appeal was accordingly allowed with costs.

Queen's Bench Practice Court.

(Coram Crompton, J.)

Wyatt v. Grey. Nov. 11, 1853.

COMMON LAW PROCEDURE ACT.—MOTION UNDER S. 17, TO PROCEED AS IF DEFENDANT PERSONALLY SERVED.

A motion was granted under the 15 and 16 Vict. c. 76, s. 17, for leave to the plaintiff to proceed as if personal service had been effected of the writ of summons, where it clearly appeared the defendant was keeping out of the way.

THIS was a motion under the 15 and 16 Vict. c. 76, s. 17, for the plaintiff to be at liberty to proceed with this action as if the defendant had been personally served with the writ of summons. It clearly appeared from the affidavits that the defendant was keeping out of the way to avoid service, and that several attempts had been made to effect the same, but without success.

Hance in support.

The Court granted the motion.

Court of Exchequer.

Percival v. Stamp. Nov. 7, 1853.

ACTION FOR ILLEGAL SEIZURE AND SALE OF GOODS.

After an illegal entry on premises by the defendant's servants, the defendant entered under fi. fa. and sold: a rule was refused

to set aside the verdict for the defendant in an action for an illegal seizure and sale.

THIS was a motion, on leave reserved, for a rule nisi, to set aside the verdict for the defendant, and to enter it for the plaintiff in this action, which was brought to recover for illegally seizing and conveying away the plaintiff's goods, to which the defendant justified under two writs of *fi. fa.* It appeared that the defendant's assistants had, on a Sunday, forcibly entered the house by his direction by means of a ladder, and had on the Wednesday following, taken possession and remained until the sale, by the defendant, of the goods under the writs, on Saturday. On the trial before *Wightman J.* at the last Yorkshire Assizes, the defendant obtained a verdict subject to this motion.

Hugh Hill in support.

The Court said, that the rule with respect to an arrest of the person did not apply to the case of goods illegally seized, and afterwards taken under a writ, and the rule would therefore be refused.

Hall v. Scotson. Nov. 24, 1853.

COMMON LAW PROCEDURE ACT.—PROCEEDING AS IF DEFENDANT PERSONALLY SERVED.—LEAVE TO COME IN AND DEFEND.

A Judge's order was made under the 15 & 16 Vict. c. 76, s. 17, for leave to proceed as if personal service had been effected in an action to recover a penalty under the 25 Geo. 2, c. 36, s. 2, where the writ was specially endorsed; and judgment was signed. A Judge's order was then made under s. 27 for leave to the defendant to come in and defend, but without any affidavit of merits: Held, that although such affidavit was not necessary in every case, it must be made in the present case.

A RULE nisi had been obtained to rescind a Judge's order, which had been obtained under the 15 & 16 Vict. c. 76, s. 27, to set aside the judgment signed in this action to recover a penalty under the 25 Geo. 2, c. 36, s. 2, and to let in the defendant to defend on the ground that the plaintiff should have served the defendant with the Judge's order under s. 17, to proceed as if personal service had been effected before he signed judgment. The writ was specially endorsed under s. 25.

Hawkins showed cause against the rule; *Lush* in support, on the ground that the defendant had not filed any affidavit of merits.

The Court said, it was not necessary under s. 27, to have in every case an affidavit of merits, nor to serve the order under s. 17, upon the defendant, before signing judgment, but in the present case the defendant ought only to be let in to defend on an affidavit accounting for his non-appearance and disclosing a defence upon the merits, and the rule would therefore be made absolute.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JANUARY 7, 1854.  
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BANKRUPTCY REFORM.

THE COMMISSION OF INQUIRY.

THE question of Bankruptcy Reform is so important, not merely to the Legal Profession, but to the commercial and trading Community, that no apology can be deemed necessary for returning to a consideration of the subject.

The Commission of Inquiry now Sitting, with Mr. Walpole, the late Secretary of State for the Home Department, at its head, is founded upon the ascertained fact, that the fees and funds applicable to the payment of expenses, have become insufficient by reason of the diminished business of the Court of Bankruptcy, and that some change is indispensable to prevent the Court itself from becoming bankrupt.

Three distinct modes are suggested by which the exigency may be met:—1st, The expenses may be diminished by cutting down the salaries and emoluments of the officers. 2ndly, The deficiency may be supplied by transferring the salaries and pensions to the Consolidated Fund. Or, lastly, The Court may be adapted to the purposes of its institution, and rendered efficient and useful as a judicial establishment.

The remedy involved in the first suggestion, may be at once disposed of as inadequate. The Commissioners and Registrars of the Court of Bankruptcy are appointed to their offices during good behaviour, their salaries have been fixed by Parliament, and without a breach of contract on the part of the Public, the salaries to which these gentlemen are legally entitled cannot fairly be reduced. It may be that the subordinate officers of Court stand upon a somewhat different footing from the Commissioners and Registrars, but it is

tolerably clear the Public would derive no sensible advantage by diminishing the fees of messengers or the salaries of ushers.

The proposition to transfer the burthen now payable out of the funds contributed by suitors to the national funds has been already discussed. It shifts the burthen from the shoulders of one section of the Public to another and a larger section; but it does not diminish the weight, and can afford no substantial relief.

The only reform which can be effectual, or which the general community is interested in obtaining, is that which will place the Court of Bankruptcy upon its proper footing, and supersede the necessity of resorting to hole-and-corner arrangements. To effect this there must be a complete revision of the Bankrupt Laws. The craze of class certificates, and all the conceits introduced by modern legislation, should be reviewed, and when condemned as unnecessary or objectionable, cut off with an unsparing hand, and the practice of the Courts, instead of being confused and uncertain, should be rendered so simple and intelligible, that every practitioner of average skill and acquirements may conduct the business of his clients in those Courts, in ordinary cases, without the assistance of either counsel or agent. Under the present system the practice of the Court of Bankruptcy is known only to a select few, and the most able and intelligent practitioner, who has not devoted himself to mastering its complexities, finds it necessary to invoke the assistance of a licensed pilot to help him to steer through the difficulties of the navigation. From this and other causes, already hinted at, the expenses of the Court are wholly disproportioned to the benefits obtained by resorting to it, and no reform can be satisfactory which does not materially diminish the expenses of proceedings

gether uncalled for. We shall take an early opportunity of stating the various objections, which apply to the conduct and management of the affairs of a private or family trust by a public board.

REMOVAL OF THE COURTS FROM WESTMINSTER.

OUR readers will recollect that the proposed removal of the Courts from Westminster to the vicinity of the Inns of Court has been advocated in this Journal for upwards of 15 years. In our Number for the 8th May, 1852, we gave, not only a full statement of the arguments in favour of the removal, but an estimate of the whole expense, with a *plan* of the proposed site of the Courts, between the Temple and Lincoln's Inn, and pointed out the ways and means by which the measure might be carried into effect without any call upon the Treasury. The last petition on the subject from the Incorporated Law Society was printed in the *Legal Observer* of 26th Feb., 1853.

The *Times*, in occasional notes connected with their Law Reports, has often adverted to the inconvenience and want of accommodation in the Courts; and on the 4th instant, that influential Journal devoted a Leading Article to the subject, which, written with its usual force, we are glad to transfer to our pages. It is as follows:—

"A serious proposition has at length been made for the removal of the Law Courts from Westminster Hall to a more permanent and central situation. It cannot for a moment be doubted that the proposed removal is a mere question of time, so great are the inconveniences to which the Public and the Profession are exposed by the present migratory habits of the Judges. At times these venerable individuals are to be found, in the full majesty of silk and horsehair, in their ill-ventilated, insufficient Courts, at Westminster. At others they present themselves in the character of nice old gentlemen in plain clothes, endeavouring to soothe the ire of pleaders and solicitors at a distance of two miles from their original shrine. With Equity Judges it is still worse. A young and aspiring lawyer may spend the earlier portion of his legal career in sheer voyages of discovery to ascertain the *habitat* of those learned persons on whom he is minded to try the effect of his accumulated knowledge. Sometimes the Lord Chancellor is at Lincoln's Inn, sometimes in Westminster Hall, sometimes in the House of Lords—*hic et ubique*—the old story of the Ghost in *Hamlet*.

With his inferior yoke-fellows of justice the case is even worse. The general direction for finding a minor Equity Judge would be to go up four pairs of stairs, and then down three, and along a passage with three doors. The adventurer must not turn to the left, for there the Barons of the Exchequer might be found, jealous of intrusion as Diana and her nymphs disporting themselves. Nor must he venture to the right, for there the Lord Chief Justice of the Common Pleas might have withdrawn awhile from public vision to compose his thoughts. Escaped from these perils, let the adventurer ascend six more flights of stairs, jump out of a window, catch at a leaden spout as he falls, let himself go through a broken pane at the head of a well-staircase, land on the first lobby, and push open a green-baize door, and there he will find the Equity Judge, sitting like a cat in a cupboard, very much ashamed of his locality. Nothing can be more inconvenient to the Profession and the Public than the dimensions and situation of the Courts at Westminster, except it be the fact that, such as they are, the Judges are not always to be found there throughout the legal year. Sometimes, as we have said, the Equity Judge is at Westminster—sometimes at Lincoln's Inn.

A great and important portion of the Common Law practice is conducted in Chancery Lane, while the Judges are sitting at Westminster. It must be added, for the sake of those gentlemen who unite Criminal with Common Law practice, that the distance is so great from the Central Criminal Court to Westminster that the interest of the prisoner must be neglected for the sake of the more desired civil practice. It is not well that it should be so. In criminal cases, more than in all others, a barrister should never accept a brief if he be not sure that he can attend to the interests of his client. But, while human nature is what it is, and while lawyers are poor and eager for practice, they will accept incompatible obligations, and trust to fortune for the result. The practice is reprehensible in the last degree, but counsel are in fairness entitled to say in self-defence that much of their irregularity arises from the fact that the Courts are scattered about London in such a manner that an advocate must well nigh possess the gift of ubiquity, in order to attend to a very moderate practice. We have taken the case of Common Law and Criminal practice, because the irregularities of barristers in this department are matter of more public notoriety, but we can assure the uninitiated reader that as much, or perhaps more, loss and inconvenience arises from the difficulty in which Chancery practitioners are placed, when one duty calls them to Westminster and another detains them in the neighbourhood of Lincoln's Inn.

"Under these circumstances, it has been proposed to remove the Law Courts altogether from Westminster to a site perhaps the most

central in London, and in the very midst of the dens of lawyers of all denominations. This site lies between the Strand on the south, Carey Street on the north, Chancery Lane on the east, and Clement's Inn and New Inn on the west. The proposed space occupies about $7\frac{1}{2}$ acres, and at present occupied by lanes and by-streets, which contain some of the choicest abominations in London. The front would be towards the Strand, the back, naturally, in Carey Street, and these would form the shorter sides of a parallelogram. It is proposed by Sir Charles Barry that the building shall be in the Tudor style, and that it should be of so decorative a kind as to be an ornament to this part of the town. As may be seen by a glance at a map of London, this position is in the very centre of the Inns of Court,—Lincoln's Inn, the two Temples, Gray's Inn, the Rolls' House, the Incorporated Law Society, and all the minor inns, are in close proximity to it.

"Of the method in which it is proposed to meet the expense we would for the present neither express approval nor disapproval. We are not as yet in a position to speak with sufficient certainty on this portion of the project; but that is no reason why it should not be laid before the Public for discussion and suggestion. It is from the Accumulation Fund of the Suitors in Chancery that the great bulk, or larger half of the money, is proposed to be derived. As it is represented, this money can be so applied without any injury to the actual suitors. In point of fact, from the year 1774 downwards, from time to time, money has been taken from the same fund for similar purposes, as the erection of the Six Clerks' offices, Masters' offices, the offices of the Examiners, and other Chancery offices in the Rolls' Yard. Acts of Parliament are quoted under which these appropriations have been made, and the authority of the late Lord Langdale is relied upon for similar applications of the fund. The ultimate cost of site and building is estimated at 673,574*l.* The amount of the stock and securities in the Court of Chancery is about 46,000,000*l.*; the annual payments in and out of Court 7,000,000*l.*; the cash balance in the Bank of England 250,000*l.*; the amount of suitors' cash in Court, including the balance, 2,500,000*l.* The "Surplus Cash Fund" or "Accumulation Fund" is said to amount to 1,341,188*l.* stock, and this is the source from which the money is to be derived for the new building. We can have no doubt as to the advantage of the scheme in every way, if it does not halt upon the fiscal foot. It is a matter of great inconvenience to practitioners and of heavy loss to suitors that the Courts should be at such distances from the chambers. The chambers cannot go to the Courts, and so the Courts had better come to the chambers. It should also be said that, if the Law Courts are removed, the Houses of Parliament will gain much in architectural possibilities."

CONSOLIDATION OF THE STATUTES.

Mr. Coode's remarks on the important distinction of *permanent* and *transitory* laws are peculiarly valuable.

"The greater part of legislation has for its object the arrival at a settled and more or less stable and *permanent* condition of the rights and obligations of all the members of the community; and, effectually, a large and important portion of English legislation has been permanent through centuries; and all legislation whatsoever intended to establish rights, or to impose and define obligations—the only material and substantive part of the law—is in its conception, and, when successful, is in its effect, of this permanent character. And it is precisely this portion of all law that determines the general and special character of every legal system, and is productive of those political and social results which are the ultimate objects of all legislation, and the consummation of all political success. It is only this portion which it much concerns us to make clear to the conceptions of all men, inasmuch as all subjects are equally interested in it, and it is this portion which, when once approved in practice, it most concerns us to make permanent. In short, nothing can justify the withholding of any labour which can be usefully bestowed upon it.

"All other matters, modes of protection, remedies, procedures, administrative, and executive arrangements,—even the greatest constitutional and political institutions, are but subservient and ministerial to the establishment and maintenance of individual rights. These instrumental institutions suffer, without legislation, incessant change, and are the constant subjects of express legislative modification. No doubt they have a stability generally proportionate to their usefulness in subordination to their prime object, and whilst they subsist good expression, good form, and certainty of effect in them, is also useful in proportion to their duration.

"But these instrumental institutions are, for our present purpose, of two kinds; the one set subservient to the permanent rights of the community, and which themselves, in their intention and expression, are always of a permanent nature.

"These, so far as they are specially connected with any primary subject of consolidation, should be consolidated with it in one operation, and would become subject to amendments with the whole of the consolidated Act, of which, indeed, they would be, in the ordinary course of things, the only part subject to much or frequent amendment.

"The second set of instrumental provisions, those, namely, which, in their conception and original institution, have a temporary and transitory character, and are adopted only as a means of transition from one state of things to another, and, by the terms of their institution,

became defunct as soon as the transformation is effected, require a wholly different treatment.

"When the object is to effect such transformation, — say, for instance, to enclose a waste, to convert common into severalty, to convert tithes into rent, and commute it for a rentcharge, to settle boundaries or the like, — the result, when effected, is a permanent result calculated to endure, perhaps, for all time; but the law which will then apply to this result will be found in the general permanent law of several property, of rent, of rent-charge, or boundary, or whatever the transformed subject may be; and a few sentences will in every case express all that is necessary to identify the subject thus transformed, with all its congeneric matter, and to confer on it all its qualities, incidents, and consequences; and this expression is all that should appear in any consolidated or any permanent law.

"All the instrumental provisions, the appointment of commissions, their investiture with powers, the definition of their mode of proceeding, their protections, and their responsibilities, are transient accessories, doomed to disappearance and extinguishment as soon as their temporary work is done."

It is justly remarked to be impossible to produce cumbrousness and complication of form, and concealment of essential matter, more effectually than by the present mode of legislation in all such cases.

"In the instances above adverted to the Register shows that in the Acts passed for effecting the commutation of tithes, the enfranchisement of copyholds, the enclosure of waste, and severance of commons, about one clause in 43 contains a permanent element, and that even in this one clause it is commonly but a part intermingled with a greater portion of transitory matter. I have not examined all these clauses with sufficient minuteness to assert the proportion very precisely, but am satisfied that the total permanent matter in the whole of this great mass of enactments does not constitute nearly one-hundredth part of the whole. Thus, by this present mode of providing in one undistinguished set of enactments both the permanent result and the transient process by which it is to be obtained, we, and all generations of men, have to wade through 99 parts of expired and inoperative verbiage for one part of *living law*."

It is then recommended that there should be separate Acts for permanent matters, and also for transient matters.

"All transitory matter should be kept asunder from all permanent, and each enacted in separate acts, which would thus, as regards the transitory provisions, be published and re-published only so long as the transitory operation continued. This would clear a consolidated law ;—

1st,—Of all retro-active enactments;

Repeals ;
Nullifications ;
Confirmations ;
Ratifications ;

2nd,—Of all occasional enactments, that is, of such wherein the force of the law is spent on one defined occasion ;

Protections for life or other periods of vested interests affected by permanent changes ;

Compensations to individuals for life or lives for meritorious services ;

Instrumental acts providing the temporary machinery for any permanent result :

3rd,—Of continuance clauses and suspension clauses.

"This simple, and, but for its constant neglect, seemingly obvious plan, of separating transitory from permanent matter, would certainly reduce the amount of statutory matter to be permanently consolidated to very much less than one-tenth of the Statute Law in force at any one time, and would greatly improve the form of both. Indeed the transitory, especially the instrumental part of our law, is susceptible of great and systematic improvement, which it would probably receive very rapidly, if it were, in the way proposed, kept separate, and thus became the subject of a more definite and distinct consideration, and of a more perfect division of labour. However, whether improved or not, it is a matter, cumbrous and troublesome as it is, of the utmost insignificance, in comparison with the small but substantial and invaluable matter of our permanent law.

"It is scarcely within the scope of these papers or of our Commission to consider in great detail the subject of *Transitory Instrumental provisions*; but one remark is important. It is that these being required very frequently, in almost identical terms, for particular occasions, they appear incessantly repeated in the Statute Book. In this they are unlike the general permanent law, with which this Commission has to deal, which rarely if ever affords a just occasion for two enactments in the same terms. It results from this fact that this transitory instrumental law, especially as regards Private Acts, is very conveniently dealt with by means of such forms as those known as 'the Consolidated Clauses' Acts,' and are capable of great practical and formal improvement in that way, and of great benefit, by the extension of jurisprudential and judicial results to all the many similar cases connected by means of one and the same identical form."

LAW OF ATTORNEYS AND SOLICITORS.

TAXATION OF BILLS OF COSTS MORE THAN 12 MONTHS AFTER DELIVERY.—SPECIAL CIRCUMSTANCES.

THE *Master of the Rolls* made the following observations on this special petition to tax a solicitor's bills of costs before payment, but more than a year after delivery: "There appears to me to be a marked distinction between a bill delivered and paid, and one which has been delivered but remains unpaid. If the account be paid and settled, the solicitor may naturally enough be negligent as to his vouchers; and therefore it is, that, in the case of a paid bill, there must be some strong case of pressure and items of overcharge to induce this Court to open the transaction and allow the taxation of the bill. The case is very different where, after delivery of the bill, nothing further has been done in the matter, and there has been no acquiescence in the demand.

"What are the circumstances in this case? It appears that the petitioner owed the respondent bills of costs in respect of which 600*l.* is claimed. In 1848, he applied for them, but none were delivered until the 10th of January, 1850, when, the petitioner being about to go abroad, either from distress or on account of the state of health of his wife, the solicitor, about 14 months after the first application, delivers his bills of costs. Nothing was done for a considerable time, and no steps were taken to enforce payment; but, in 1851, a correspondence took place as to these bills of costs, and after some discussion this petition was presented to tax the bills.

"There must, no doubt, be 'special circumstances' to justify a taxation, but is it an unimportant circumstance, that the bill was delivered 14 months after application, and on the eve of the client going abroad? Again, this allegation is brought forward, that the bills of costs charge for 320 sheets of abstract, though they contained only 217 sheets. I have carefully attended to this, and find that this allegation is not met at all. The solicitor merely says, he believes the abstracts contain that number of sheets; I cannot attend to this in the face of a positive allegation on the other side.

"There is, therefore, a distinct and substantial case of overcharge, which, in the case of an unpaid bill, and where there has been no settlement or proceedings in the

nature of acquiescence, is sufficient in my opinion, to entitle the petitioner to the usual order to tax the bills of costs." *In re Williams*, 15 Beav. 417.

NOTICES OF NEW BOOKS.

Income Tax Tables under the Statute 16 & 17 Vict. c. 34. By CHARLES M. WILLICH, Actuary and Secretary to the University Life Assurance Society. Fourth Edition. Longman & Co., 1853.

The New Succession and Legacy Duty Tables, under the authority of 16 & 17 Vict. c. 51. By the same Author. Longman & Co., 1854.

THE former of these useful works shows at first sight the amount of duty at 7*d.*, 6*d.*, 5*d.*, 3½*d.*, 3*d.*, 2½*d.*, 2*d.*, and 1½*d.* in the £, payable under the New Income Tax of last Session, and will be found to contain all the calculations required to ascertain the exact amount of duty from 1*d.* upwards on incomes up to 10,000*l.* The work is also accompanied by a variety of statistical information, extracted from Parliamentary documents.

The contents of the second work are as follow:—

1. Value of annuities chargeable with duty, calculated according to the table in 16 & 17 Vict. c. 51, from 1 to 20 years of age.
2. Showing the duties payable on successions, legacies, annuities, residues, &c., under the same Act.
3. Showing the amount of annual income arising from residue, &c., calculated at 4 per cent., being the rate at which it is estimated at the Legacy Duty Office.
4. Showing the amounts of successions, legacies, annuities, residues, &c., which produce each progressive penny in a shilling of duty at the several rates fixed by the Act.
5. Showing the values of an annuity of 100*l.* per annum, for any number of years not exceeding 95, according to the table in the Act.

The Author adds examples to facilitate reference to both the collections of tables.

LAW OF EVIDENCE.

PROOF OF WRITTEN INSTRUMENT BY ATTESTING WITNESS.

ON the trial of an action in ejectment by a mortgagee, the plaintiff's counsel called the defendant on his subpoena, instead of the attesting witness, to prove the execution of the mortgage deed. A nonsuit was thereupon directed, subject to a rule.

In the judgment of the Court on discharging the rule which had accordingly been obtained, *Pollock, C. B.*, said :—

"The question in this case is, whether, since the 14 & 15 Vict. c. 99, s. 2, the execution of his deed can be proved by a party to the cause, who is subpoenaed as a witness, without calling the subscribing witness; and we are of opinion that it cannot. In saying this, I also express the opinion of my brother *Parke*, who did not hear the argument. We think that the rule of law requiring proof by the subscribing witness is so inflexible, clear, and universal, that it cannot be set aside by any reasoning, however cogent,—and certainly it must be admitted that there is considerable force in the arguments founded on the recent Statute.

"The cases,¹ when carefully examined, will be found to have established, as we think, these principles as those on which our decision must turn.

"The attesting witness must be called to prove the execution of a deed for this reason, that by an imperative rule of law the parties are supposed to have agreed *inter se* that the deed shall not be given in evidence without his being called to depose to the circumstances attending its execution. If, therefore, the attesting witness is not called, the deed cannot be read, because this agreement cannot be broken; but any agreement may be waived by the parties to it. If then, in the course of the proceedings in the cause, the party to the deed admits the execution, or if by his pleadings he does not require the execution to be proved, he may be very reasonably said to have waived the agreement, and the other party, accepting the waiver, does not call the attesting witness. In Equity, an admission in the defendant's answer is sufficient, and is a waiver of the agreement; but the bill and answer are the pleadings in Equity, and an admission in the answer is the same as an admission on the pleadings at law. But here, on the pleadings, the defendant has put the execution of the deed in issue, and he is called and compelled as a witness to prove the fact. How can that be put reasonably as a waiver of the agreement,

not to give the deed in evidence without calling the attesting witness? Manifestly it is no waiver at all." *Whyman v. Garth*, 8 Exch. R. 803.

ADMINISTRATION OF OATHS.

IN CHANCERY.—TAKEN BEFORE THE SOLICITOR IN THE CAUSE.

As Commissions to Administer Oaths have been granted to several London Commissioners, it may be useful to state the following decisions :—

Affidavits taken before a person who was a solicitor in the cause cannot be read, and the petition was dismissed, and the costs directed to be paid by the solicitor. *In re Hogan*, 3 Atk. 812.

Affidavits sworn before a Master Extra, who was the clerk of the plaintiff's attorney, rejected. *Wood v. Harpur*, 3 Beav. 290.

IN THE COMMON LAW COURTS.

By the Rules of Hilary Term, 1853, s. 142—No affidavit of service of process shall be deemed sufficient if sworn before the plaintiff's own attorney or his clerk.

Section 143.—Where an agent in town, or an attorney in the country, is the attorney on the record, an affidavit sworn before the attorney in the country shall not be received; and an affidavit sworn before an attorney's clerk shall not be received in cases where it would not be receivable if sworn before the attorney himself; but this rule shall not extend to affidavits to hold to bail.

POINTS IN EQUITY PRACTICE.

MARRIED WOMAN.—PETITION IN FORMA PAUPERIS.—NEXT FRIEND.—SUPPRESSIO VERI.

AN order was made on motion *ex parte* for leave to a married woman to present a petition *in forma pauperis* and without a next friend, to obtain, under the 2 & 3 Vict. c. 54, access to her children, and for the custody of such as were under seven years of age, and that the petition might be received without the 1*l.* stamp, required by the Orders of October 25, 1852. The affidavit in support stated, that the petitioner had separated from her husband, but that a decree for the restitution of conjugal rights had been made, but she was unable to obtain the requisite sum of 1*l.* for the petition, from him or any other person, or to procure any person to act as her next friend. There was the usual statement of her not being worth 5*l.* exclusive of her wearing apparel. The husband moved, on notice to discharge this order, on the ground his wife had concealed the fact that she had several relations in good circum-

¹ *Johnson v. Mason*, 1 Esp. 89; *Call v. Dunning*, 4 East, 53; *Abbot v. Plumbe*, 1 Doug. 216; *Barnes v. Trompowsky*, 7 T. R. 265; *Rees v. Harringworth*, 4 M. & Selw. 350.

stances who would have been competent to act as next friend, but the motion was refused, as it was not shown any one of them was now willing to act, or that the wife had applied and one had consented to act as her next friend. *Ex parte Hakewill*, 3 De G., M'N. & G. 116.

PETITION FOR APPOINTMENT OF NEW TRUSTEES OF CHARITY. — ENTITLING. — ATTORNEY-GENERAL'S FIAT.

A petition for the appointment of three new trustees to act with the existing trustees of a charity, for the education and maintenance of poor children of the parishes of East Tytherley, Mottisfont, and West Tytherley, was directed to stand over, in order to be entitled in the matter of Sir Samuel Romilly's Act (52 Geo. 3, c. 101), as well as in the matter of the Trustee Act, 1850 (13 & 14 Vict. c. 60) and of the charity, and held also that it was necessary to obtain the fiat of the Attorney-General. *In re Rolle's Charity, ex parte Goldsmid*, 3 De G., M'N. & G. 153.

POINTS IN COMMON LAW PRACTICE.

DISCHARGE OF PEREMPTORY UNDERTAKING TO TRY ON DEFENDANT'S INSOLVENCY.

IN an action on a bill of exchange, accepted by the defendant's testator, notice of trial was given pursuant to a peremptory undertaking entered into on discharging a rule. Three days afterwards the plaintiff discovered the defendant was insolvent, and thereupon countermanded the notice and offered a *stet process*, which was refused. It was held that the obligation to try could not be discharged upon application after a peremptory undertaking had been given. *Emden v. Dewey*, 16 Q. B. 804.

AFFIDAVIT, ENTITLING. — NAME OF DEFENDANT.

A defendant, who was described in a writ as "H. W. Bauerman," had entered an appearance in the name of "Henry William Bauerman, sued as H. W. Bauerman," and was accordingly so described in the declaration. Upon a rule under the 2 Wm. 4, c. 39, s. 17 (*sed nunc* 15 & 16 Vict. c. 76, s. 7), on the plaintiff's attorney for particulars of the profession, occupation, or quality, and place of abode of the plaintiff, the affidavit described him as "Hillary John Bauerman (his true name) sued as Henry William Bauerman:" *Held*, irregular. *Baldwin v. Bauerman*, 12 Com. B. 152.

See also *Shrimpton v. Carter*, 3 Dowl. P. C.,

648, where, in an action against "William Carter," an affidavit, the title of which described him "William Carter, the elder, sued as William Carter," was rejected; and in *Sims v. Prosser*, 15 M. & W. 151, where the defendant was described in the writ as "Frederick C. Prosser," an affidavit to set aside the judgment was *held* irregular where the defendant was described in its title "Frederick Coulston Prosser;" and in *Regina v. Sheriff of Surrey*, 8 Dowl. P. C. 510, the affidavit, on which an attachment against the sheriff for not returning a *fi. fa.* had been obtained in an action on a bill of exchange, was entitled "Robert Smith v. William Neely:" *Held*, that it could not be read, the action being "Robert Smith v. W. Neely."

NEW ORDER UNDER CHARITABLE TRUSTS ACT.

PROCEEDINGS AND FEES IN CASES FROM 30*l.* TO 100*l.*

THAT any application to the Master of the Rolls, or to a Vice-Chancellor, under the Charitable Trusts' Act, 1853, s. 28, shall be made by summons, and such summons may be in the form set out in Sched. A, annexed to the General Order of the 16th October, 1852, or as near thereto as the nature of the case may permit.

The fees payable on proceedings before the Master of the Rolls, or of any of the Vice-Chancellors under the said Act, shall be the same as are payable according to the Order of the 23rd October, 1852, in respect of other proceedings commencing by summons, and shall be collected by means of stamps as directed by the Order of 25th October, 1852.

In all cases in which the Master of the Rolls, or any Vice-Chancellor, shall direct that any matter commenced by summons under the said Act shall be heard in open Court, the same fees shall be payable, and the same costs shall be allowed, as would have been payable in respect of any other matter so heard.

No order made under the said Act by the Master of the Rolls, or by any of the Vice-Chancellors, shall be subject to appeal where the gross annual income of the charity has not been declared by the Charity Commissioners for England and Wales to exceed 100*l.*, unless the Master of the Rolls, or the Vice-Chancellor by whom such order may have been made,

shall certify that such appeal ought to be permitted, either absolutely or on such terms as the said Master of the Rolls or Vice-Chancellor may think fit to impose.

BIRMINGHAM BOROUGH COURT.

By an Order in Council dated 29th Dec., 1853, her Majesty has been pleased to approve of the report of the Judicial Committee of the Privy Council, dated 8th Dec., 1853, and to direct that the jurisdiction of the Borough Court of Birmingham shall be excluded in all cases whereof the County Court hath cognizance.—From the *London Gazette* of 3rd Jan.

LOCAL AND PERSONAL ACTS.

Declared Public, and to be Judicially Noticed.

16 & 17 VICT. 1853.

[Continued from page 161, ante.]

73. An act to amend the Acts for the Regulation of Municipal Corporations in Ireland so far as relates to the Borough of Limerick.

74. An act to amend and extend the Provisions of the Act relating to the Leeds and Whitehall Turnpike Roads, and to create a further Term therein, and for other purposes.

75. An act for repairing, maintaining, and rendering more safe certain Reservoirs on the Adel Beck in the West Riding of the County of York.

76. An act to amend "The Sunderland Dock Act, 1846," and "The Sunderland Dock Amendment Act, 1849," and for other purposes.

77. An act for the Establishment or Improvement and Regulation of Markets and Fairs in the Borough of Leominster, and for other purposes relating to the said Borough.

78. An act for making a Railway from the Hawick Branch of the North British Railway, near to the Eskbank Station, to the Royal Burgh of Peebles.

79. An act to authorise an Extension of the Londonderry and Coleraine Railway.

80. An act for making a Railway from Ballymena to Portrush.

81. An act to confirm certain Preference Shares created by the North British Railway Company, and to make better Provision for the Payment of the Debts of the said Company, and for other purposes.

82. An act to enable the Scottish Midland Junction Railway Company to make Branch Railways to Blairgowrie and Kirriemuir; and to amend the Acts relating to such Company; and for other purposes.

83. An act for the better Improvement and Regulation of the Borough of South Shields in the County of Durham, the Establishment of a Cemetery therein, and for other purposes.

84. An act to unite into one Company the Bristol Gaslight Company and the Bristol and

Clifton Gaslight Company, and to enable the united Companies to raise further Capital.

85. An act for making a Railway from Staines to Wokingham and Woking.

86. An act for making a Railway from Wimbledon to Croydon in the County of Surrey, to be called "The Wimbledon and Croydon Railway," and for other purposes.

87. An act to enable the Eastern Counties Railway Company to construct a Railway from the Line of the Northern and Eastern Railway near Straford to Woodford and Loughton; and to repeal certain Provisions of their existing Acts; and to grant further Powers to the said Company for capitalizing their Debt; and for other purposes.

88. An act for making a railway from the London, Brighton and South Coast Railway, to or near to the Town of East Grinstead in the County of Sussex.

89. An act better better supplying with Water the Towns and Villages of Haslingden, Rawtenstail, and Newchurch, and the Townships of Haslingden, Higher Booths, Lower Booths, Newchurch, and Hapton, in the Parish of Whalley, the Townships of Cowpe Lench, New Hall Hey, and Hall Carr, and Tottington Higher End, in the Parish of Bury, and the Extra-parochial Places of Hen Heads and Dunnockshaw, all in the County Palatine of Lancaster.

90. An act to enable the Monkland Railways Company to make certain Railways in the Vicinity of Bathgate and Airdrie; and for other purposes.

91. An act to authorise the Mayor, Aldermen, and Citizens of the City of Manchester to make certain new Streets; and to amend the Acts relating to the said City; and for other purposes.

92. An act to repeal an Act of the 7th year of the reign of King George the Fourth, for making and maintaining a Turnpike Road from Wimpole to Wrestlingworth and Potton, and to make other Provisions in lieu thereof.

93. An act to incorporate a Company for making a Railway from Kingston-upon-Hull to or near to Withernsea in Holderness, with a Branch therefrom; and for other purposes.

94. An act to enable the Glasgow and South-Western Railway Company to make a Branch Railway to near Mayfield in the County of Ayr.

95. An act for extending the time granted by "The Rochester Bridge Act, 1846," for the completion of such Bridge.

96. An act to enable the Limerick, Ennis, and Killaloe Junction Railway Company to lease their Undertaking; and for other purposes.

97. An act to enable the East and West India Docks and Birmingham Junction Railway Company to raise additional Capital; and for other purposes.

98. An act to amend the Gorbals Gravitation Water Company's Acts, to authorise the Extension of their Works to supply the Royal Burgh of Renfrew and Suburbs and other places with Water; and for other purposes.

99. An act for making a Railway from Havant in the County of Southampton to Godalming in the County of Surrey, to be called "The Portsmouth Railway;" and for other purposes.

100. An act to enable the London, Brighton, and South Coast Railway Company to enlarge their Station at London Bridge, and their Goods Station at Brighton, and to make a Branch Railway to the Crystal Palace; and for converting the Debenture Debt of the London, Brighton, and South Coast Railway Company into Stocks or Shares; and for other purposes.

101. An act to enable the Aberdeen Railway Company to raise further Moneys; to authorise the Abandonment of the authorised Road to the Quays through the Station at Aberdeen, and the formation of another Road in lieu thereof; to extend the Time for the compulsory Purchase of Lands and for the completion of the Aberdeen Station; to alter, amend, and extend the Acts relating to the Company: and for other purposes.

102. An act to repeal an Act for making and maintaining a Road from the Top of Hunt's Bank in the Town of Manchester, in the County of Lancaster, to join the Manchester and Bury Turnpike Road in Pilkington in the same County, and to substitute other provisions in lieu thereof.

103. An act for amending the Provisions with respect to the Commissioners of the Second District for Drainage by the River Witham contained in the Witham Drainage Act of the 2nd year of George the Third chapter 32, and for other purposes, and of which the Short Title is "The Witham Drainage Second District Act, 1853."

104. An act for more effectually repairing and maintaining the road from Burford in the County of Oxford to Lechlade in the County of Gloucester, the road from thence through Highworth to the Cricklade and Swindon Turnpike Road in the County of Wilts, and the Bridge on the said Roads across the River Isis or Thames at or near the Town of Lechlade aforesaid; and for granting a further Term in the said Roads and Bridge; and for other purposes.

105. An act to amend an Act passed in the 7th year of the reign of King George the 4th, intituled "An Act for making a Turnpike Road from Shipley to Bramley, together with certain Branches therefrom, in the West Riding of the County of York."

106. An act to authorise the London Dock Company to make a new Entrance to their Docks from the River Thames and other Works, and to augment their Capital Stock; and for other purposes connected with the said Docks.

107. An act for the maintenance of the existing Works of the Company of Proprietors of the Barnsley Waterworks, and for the Purchase of Lands by them, to repeal their Act, and make other provisions in lieu thereof.

108. An act to enable the Midland Railway Company to make a Line of Railway from near

Leicester to the Great Northern Railway near Hitchin, with a Branch, in lieu of the Line of Railway and Branches authorised by "The Midland Railways Extension to Hitchin, Northampton, and Huntingdon Railway Act, 1847," and "The Midland Railway Extension to Hitchin, Northampton, and Huntingdon Railway (Wellingborough Deviations) Act, 1848."

109. An act to authorise the Re-issue of certain of the Shares in the Capital of the York and North Midland Railway Company, called Hull and Selby Purchase, &c., Shares, and for other purposes.

110. An act to enable the London and North Western Railway Company to acquire and hold certain Lands and Buildings at or near the Terminus of the Haydon Square Branch of the London and Blackwall Railway; and for other purposes.

111. An act to enable the Leeds, Bradford, and Halifax Junction Railway Company to construct certain Branch Railways in the West Riding of the County of York; and for other purposes.

112. An act to repeal the Act for repairing the Alston Turnpike Roads, and to make other Provisions in lieu thereof.

113. An act for making a Railway from the Great Southern and Western Railway near Roscrea to Parsonstown, to be called "The Roscrea and Parsonstown Junction Railway," and for other purposes.

114. An act to authorise the Abandonment of a Portion of the Undertaking of the Limerick, Ennis, and Killoloe Junction Railway Company, and the Construction of a new Line of Railway in lieu of a Portion of the Line to be abandoned; and to revive in respect of a Portion of the said Undertaking the Powers of the said Company for the compulsory Purchase of Lands, and to extend in respect of the same Portion of the said Undertaking the Powers of the said Company for constructing Works; and to amend and repeal Portions of the Act relating to the said Company; and for other purposes.

115. An act for the better Maintenance and Repair of the Highways in Wildmore Fen and the East and West Fens in the County of Lincoln, and for other purposes, and of which the Short Title is "The Wildmore Fen and East and West Fens Highways Act, 1853."

116. An act for reviving the Powers of the South Eastern Railway Company for taking Lands and Buildings for the purpose of enlarging their London Bridge Station on the North Side thereof, and for extending for a further Period such Powers, and for other purposes.

117. An act to enable the Eastern Counties Railway Company to construct Branch Railways from the North Woolwich Line of the Eastern Counties Railway to Ham Creek and the River Thames; and for other purposes.

118. An act for more effectually improving the Town of Burton-upon-Trent in the County of Stafford.

119. An act to authorise the Abandonment

of the Carlisle Canal, and the making of a Railway in lieu thereof, from the Newcastle-upon-Tyne and Carlisle Railway at Carlisle to Port Carlisle; to repeal the Acts relating to the Carlisle Canal and Dock, and to re-incorporate the Company; to authorise the raising of a further Sum of Money; and to confer additional Powers; and for other purposes.

120. An act to alter and amend the Provisions of "The Governor and Company of Copper Miners Act, 1851," and to confer further Powers on the said Company.

121. An act to enable the South Eastern Railway Company to extend the Reading, Guildford, and Reigate Railway to the Great Railway at Reading; and for other purposes.

122. An act to enable the Warrington and Altrincham Junction Railway Company to extend their Railway to Stockport.

123. An act for incorporating and regulating the Electric Telegraph Company of Ireland, and for better enabling the Company to establish and work Telegraphs in Scotland and Ireland and between those Countries; and for other purposes.

124. An act for making a Railway from Spalding to Sutton Bridge and Wisbeach.

125. An act for making a Railway commencing by a Junction with the Scottish Central Railway at Stirling, and terminating by a Junction with the Caledonian and Dumbar-tonshire Junction Railway at Alexandria, to be called "The Forth and Clyde Junction Rail-way."

126. An act for making Turnpike Roads from Upton Saint Leonard's to Brimsfield and Birdlip in the County of Gloucester.

127. An act for enabling the Local Board of Health for the District of Dewsbury to construct Waterworks; and for other purposes.

128. An act to authorise the opening of a Diversion of the Wakefield and Sheffield Turnpike Road, and for other purposes.

129. An act for the Improvement of the Harbour of Saint Ives in the County of Cornwall.

130. An act to enable the South Eastern

Railway Company to make a Railway from Stroud to Maidstone; and for other purposes.

131. An act to authorise the construction of additional Docks and other Works in connexion with the Victoria (London) Docks, and to consolidate and amend the Provisions of the Act relating to such Docks.

132. An act for making a Railway from Stroud to Canterbury with Branches to Faver-sham Quays and Chilham.

133. An act for supplying with Water the Inhabitants of Walsall, Dudley, and other Places in the Southern Parts of the County of Stafford, and in certain Parts of the County of Worcester adjacent thereto.

134. An act to enable the St. Helen's Canal and Railway Company to extend their Railway to Rainford, and to enlarge their Stations at Sutton; and for other purposes relating to the company.

135. An act for more effectually repairing and improving several Roads leading to or from the Town of Salford through Pendleton and other Places in the County Palatine of Lan-caster.

136. An act for enabling the Leeds North-ern Railway Company to create new Shares, and raise Money on Loan for discharging cer-tain Liabilities; and for other purposes.

137. An act for making a Railway from Be-dale to Leyburn in the North Riding of the County of York, to be called "The Bedale and Leyburn Railway;" and for other purposes, and of which the Short Title is "The Bedale and Leyburn Railway Act, 1853."

138. An act for the Adjustment of the Debts of the Commissioners of the Holme Reservoirs, and of the Interest due thereon, and for enab-ling them to restore and repair their Reservoirs; and for other purposes.

139. An act for paving lighting, watching, draining, supplying with water, cleansing, re-gulating, and otherwise improving the Town and Parish of Spalding in the County of Lin-coln; and for making a Cemetery; for erect-ing a Corn Exchange and Market House there-in; and for other purposes.

[To be continued.]

ATTORNEYS TO BE ADMITTED.

Hilary Term, 1854.

Queen's Bench.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Allen, Charles John, 20, Bedford-row . . .
 Barstow, William, Halifax . . .
 Beardsall, Thomas, Manchester . . .
 Birdsey, William, 2, Canterbury-road, Brixton . . .
 Bradley, George, Castleford, near Leeds . . .
 Brooks, James Howard, Gee-cross, Manchester . . .
 Brown, James, 37, Hart-street, Bloomsbury; and
 Walton-on-the-Hill, near Liverpool . . .
 Butler, Abraham, 5, Berners-street, Oxford-street;
 and Dalton in Furness . . .
 Cave, William Henry, Craven-street, Strand; and
 Thatcham . . .

J. J. Allen, Bedford-row
 C. Barstow, Halifax; M. Stocks, Halifax
 H. Barnett, Walsall
 J. J. Millard, Cordwainers'-hall
 C. Bulmer, Leeds
 E. Werthington, Manchester
 J. Neale Liverpool
 W. Butler, Dalton in Furness
 J. W. Mecey, Thatcham

Clerks' Names and Addresses.

To whom Articled, Assigned, &c.

Chambers, Robert Phillips, 6, South-square; and Tokenhouse-yard	E. Mullins, Tokenhouse-yard
Chubb, William, 6, Hinde-street, Manchester-sq.	C. F. Chubb, South Square
Clarkson, Richard, Bewdley, and Calne	E. T. Clarkson, Calne
Cock, Horatio Searle, 44, Manchester-street, Man- chester-square	E. Randall, Southampton; C. Gardiner, Old Jewry- chambers; D. S. Morice, Coleman-street
Conway, John, 65, Denbigh-street, Pimlico	H. A. Ewer, Liverpool
Coode, John, Saint Austell	E. Coode, St. Austell
Cooper, Douglas, Sunderland	J. M. Cooper, Sunderland
Cooper, Thomas, 2, White-conduit-street, Isling- ton; and Kidderminster	W. Boycot, Kidderminster
Croome, Alexander Swayne, The Rectory, Bethnal- green	J. Starmer, Wainfleet
Davies, Rees Thomas, Neath; Cecil-street; and Swansea	J. J. Price, Swansea
Davis, Frederick John, Tygwyn, Pembroke	Thomas Morgan, Cardigan
Dinn, Henry, 14, Stockwell-place, Stockwell	W. H. Engleheart, Great Knight Ridor-street; R. Breze, ditto
Dix, John William Stone, St. George, Gloucestersh. Dysart, William Hobson, Mile-end-hall, Stockport	T. Dix, Bristol
Evans, Edward, 7, King's-bench-walk, Temple; and Chester	J. Vaughan, Heaton Norris, Chester
Everest, William Alexander, Epsom	F. Boydell, Chester
Fitch, Noel Edgar, 12, Chryssell-road, North Brix- ton	W. Everest, Epsom
Gaskell, Arthur, 34, Burton-street, Burton-cres- cent; and Surrey-street	J. H. Fitch, Union-street, Southwark
Grylls, George William Fred., 21, Hermes-street, Pentonville; Princes-row, Moreton-terrace; and Helston	H. F. Coppock, Stockport; R. Gadsden, Bedford- row
Hall, George Samuel, Cambridge	G. Grylls, Helston
Hardisty, Robert Richard, 6, Sussex-ter., Hyde- park	S. Adcock, Cambridge
Harland, Thos., 1, Mecklenburgh-terrace, Gray's- inn-lane; and Bridlington	W. Parke, Lincoln's-inn-fields
Hawkins, Geoffry, 61, Acton-street, Gray's-inn- road; and Eldon-chambers	S. Taylor, Bridlington
Hayter, Thomas, West Springfield, Upper Clapton	W. Williams, Lincoln's-inn-fields
Healis, Wm. Hopes, 8, Duke-street; Somerset- street; Barnard-castle; and Marton-hall	R. E. Smith, Serjeant's Inn; T. Tilson, Coleman- street
Hellings, Robert Wintle, 50, Great Coram-street, Bloomabury; Albert-street; and Bath	W. Watson, Barnard-castle, Durham
Hillman, Edward, Cliffe, near Lewes	R. H. Hellings, Bath
Holland, Joseph Thomas, Ross	J. T. Auckland, Lewes
Hubbard, Joseph Samuel, 18, Bucklersbury	T. Edwards, Ross
Hulbert John Henville, 31, Lincoln's-inn-fields	J. J. Hubbard, Bucklersbury
Iles, John Arthur, 44, Grove-place, Brompton; and Hill-street, Knightsbridge	H. S. L. Hussey, New-squar
Keighley, John Norman, Peckham-grove, Camber- well	F. W. Calvert, York
Kelsall, Frederick Henry, 14, Upper Porchester- street, Paddington; and Chester	T. D. Keighley, Basinghall-street
Kent, Robert Jackson, Castle-house, Hampton	J. Robinson, Liverpool
Lamb, James Abner, 14, Manchester-street, Gray's-inn-road; and Kettering	F. J. Kent, Hampton
Lambert, Henry William, Beverley, York	H. Lamb, Kettering; G. W. Lamb, Kettering
Langborne, Frank, 32, Keston-street, Brunswick- square; and Whitby	H. J. Shepherd, Beverley; George Shepherd, Beverley
Leach, John 1, Featherstone-buildings, Holborn; Devereux-court; Huntley-street; and Yeovil	J. Buchanan, Whitby.
Leathe, Charles Edmund Stanger, Lothbury	T. Lyon, Yeovil; G. M. Gray, Staple-inn
Lloyd, Henry, 13, Cecil-street, Strand; and Win- chester	S. Cotton, Lothbury
Logan, Alexander Crosby, Henrietta-st., Bruns- wick-square	F. Bowker, Winchester
Lomax, Richard, 7, Stafford-street, Bond-street; and Bury	J. Septimus Robinson, Sunderland
Lumley, Lewis Charles, 4, York-st., St. James's- square; and Guilford-place, Russell-square	A. Grundy, Bury
Lyne, Frederick Lewis, 17, Robert-terrace, Chal- sea; and Wigan	B. Lumley, Parliament-street
	E. Lyne, Liskeard; M. Tatham, Lincoln's-inn-fields

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Marshall, Robert, 48, Lime-street	J. W. Nicholson, Lime-street
Morris, Thomas Porter, Banbury	T. Morris, Warwick; J. Fortescue Banbury
Nash, James, jun., 20, Argyle-square King's-cross; and Bewdley	W. N. Marcy, Bewdley
Oliver, George James, 13, Lawrence-lane, Cheap-side; and Grove-terrace	H. Lloyd Milk-street
Pemberton, William, 40, Great Cromer-st.; King-st.; Sidmouth-st.; and Plasissa, near Mold	P. S. Humberston, Chester
Peron, Robert Burchall, 22, Everett-st., Russell-sq.; Alfred-place, Everett-st.; and South Petherton	H. B. Peron, deceased, South Petherton; J. B. Hayward, ditto; W. H. Wright, Essex-street
Pierce, John Timbrell, 33, Camden-rd.-villas, Camden new town	T. Chubb, Malmesbury; J. W. Taylor, Great James-street
Prall, Richard, jun., Devonshire-place, Wandsworth-rd., Surrey	R. Prall, Rochester; J. B. May, Queen-square, Bloomsbury
Pratt, John Thomas Becher, 12, Upper Grosvenor-street; and Eccles, near Manchester	R. B. Upton, Austin Friars
Preston, Richard Montague, Chester	T. Terrell, Guildhall, City
Rhodes, Arthur, Muswell-hill	H. Masterman, Bucklersbury
Rule, William Charles, 17, Great Cambridge-street, Hackney-road	H. Lloyd, Milk-street
Rush, Edward, 1, Craven-hill, Baywater	J. R. Rush, Austin Friars
Shaw, Wm., 5, Blomfield-gardens, Westbourne-terrace; and Burnley, Lancashire	R. Shaw, Burnley
Sherratt, Thomas, Camberwell-green; and Audley	T. Llewellyn, Funstall
Simms, Frederick, Frederick-street; Wirksworth; Mornington-place, Featherstone-buildings	G. Hodgkinson, Wirksworth
Smith, Tom, Tavistock-square, Middlesex	A. Jones, Sise-lane, London
Sears, Benjamin, 32, Great George-street, Westminster; and South-square	S. Carter, Birmingham
Steevenson, Ed. Place, Everitt-street, Middlesex; and Northampton	J. Hensam, Northampton
Swarbreck, Charles Mc'Cartney, Leeds; and Thirsk	Thomas Swarbreck, Thirsk
Thomas, Isaac, Wigan	J. Mayhew, Wigan; R. Darlington, Wigan; T. F. Taylor, Wigan
Thompson, John, Whitehaven	J. Musgrave, Whitehaven; P. Wright, Liverpool
Tindall, James, Monmouth	J. Powles, Monmouth
Todd, Stephen Ellis, Kingston; and Hambleton, near Selby	T. Crust, Beverley
Wadson, Jas., Weyman, 2, Gray's-inn-square; and Romford	S. J. Wadson, Austin Friars; C. Evans, Gray's-inn-square
Ware, Joseph, Uffculme	R. Bowerman, Uffculme
Watson, Robert William Gifford, 7, Ashburnham-grove; Stoke Damerel; and Gray's-inn-square	H. Tucker, Plymouth
Weston, Arthur, Brackley	R. Weston, Brackley
Wigg, Carr, Bedford-row, Bloomsbury	F. Gwatkin, New-square, Lincoln's-inn
Wild, James Anstey, Montpellier-villas, Stockwell	J. Mackrell, Cordwainers' Hall
Willis, George, 55, Acton-street, Gray's-inn-road; and Cranbrook	W. T. Neve, Cranbrook
Wilson, Joseph Birkbeck, Cockermouth	R. Benson, Cockermouth
Winter, James John, Heigham, Norfolk	J. Winter, Heigham, Norfolk
Winterbotham, John B., jun., B. A., LL. B., Burton-street, Burton-crescent, Cheltenham	J. B. Winterbotham, Cheltenham
Witt, Alexander King, 2, Belle-Vue-place, Southampton	W. H. Moberly, Southampton
Woodward, John Hawkes, Bedford-st., Bedford-row; Frederick-street; and Pershore	W. W. Woodward, Pershore
Wright, Henry, 22, Harrington-street, Hampstead-road; Alfred-place; and Keighley, York	T. Waterworth, Keighley
Wright, Richard, LL. B., Willesden; Moorgate-street	P. Plumley, Moorgate-street
Wright, William James, Dereham-road, Norwich; and Long Sutton	R. Mossop, Long Sutton; W. L. Mendham, Norwich
Young, Robert, York	R. E. Smithson, York

Added to the List pursuant to Judge's Orders.

Chater, Henry, Newcastle-on-Tyne; and 61, Herbert-street, Hoxton	T. Chater, Newcastle-on-Tyne
Sutton, Daniel Stephen, Burslem	R. Heaton, Burslem; Wm. Harding, Burslem
Voules, Hon. Edmund, 12, Alfred-place, Brompton	A. J. Lane, Essex-street; T. Clark, Dean's-court Doctors' Commons

SELECTIONS FROM CORRESPONDENCE.

COUNTY COURTS.—AUDIENCE OF ATTORNEYS' CLERKS.

I ENTIRELY coincide with your correspondence in the inconveniences sustained by the Profession by reason of some of the Judges of the County Courts peremptorily refusing, in no very civil terms, to hear a managing and intelligent clerk,—insisting on the attendance of the principal, however urgent his presence may be required in the Superior Courts or elsewhere,—a course of conduct not followed by the Judges of the Superior Courts.

I trust the Judges of the local Courts will forthwith take into consideration the propriety of establishing some such rule as was suggested by one of your correspondents last month.

I confess I see no difficulty in adopting a plan whereby the *identity* of the clerk may be at once established. The evil operates as a denial of justice, many cases having in consequence been improperly decided.

A SOLICITOR.

[There must be a provision against attorneys lending their names to persons who are not their regular clerks. How is that to be effected?—Ed.]

LETTERS OF ADMINISTRATION.—INSOLVENCY.—STAMP DUTY.

SIR,—In the event of any practical reform taking place in the Prerogative Court, one material branch of it, I trust, will be considerably altered or modified to meet the many cases of a testator's or intestate's insolvency, which form no inconsiderable number in the course of a year.

Allow me, then, to suppose a case under the present system of a party dying intestate, and who had formerly been in business, but at the time of his decease his affairs are found to be in an insolvent condition. He dies possessed of stock in trade, household goods, debts and effects of the value of 950*l.*; but it is ascertained that he owes upwards of 1,500*l.* The administration

must be taken out, and to enable a party to do this, in the first place, the expense of a valuation of his effects is necessary; in the next, a duty of 30*l.* must be paid upon the administration; and, so soon as the estate can be wound up, a dividend is in due course paid to the creditors, and the residuary account passed at Somerset House, showing that there is in fact no residue upon which duty is payable. The administrator is then enabled to make an application for return of the original duty paid by him; this he generally does, and in some cases is enabled to get back the greater part. In the event of his doing so, the estate has to bear the costs of such application; in intricate cases at least 7*l.* 7*s.*, as well as the expense of declaring and paying a second dividend to the creditors, which would in some cases reduce the return of duty to so small a sum as to make it scarcely worth while to declare one.

Would it not be as well, in all cases of known insolvency, where it can be deposed to in the first instance, to grant an administration with a nominal fixed duty;—the administrator being held bound (by himself and sureties if necessary) to pay any additional duty, should that be found necessary on a final passing of the accounts. E.C.

NOTES OF THE WEEK.

MEETING OF PARLIAMENT.

By a Proclamation dated the 29th Dec., 1853, it is ordered that Parliament be further prorogued to Tuesday, the 31st day of January 1854, and that the said Parliament shall then assemble and be holden for the despatch of divers urgent and important affairs.—From the *London Gazette* of 30th Dec.

NEW MEMBER OF PARLIAMENT.

John O'Connell, Esq., for Clonmel, in the room of the Hon. Cecil Lawless, deceased.

SCOTCH LAW APPOINTMENT.

Mr. *Alexander Stuart Logan* has been appointed Senior Advocate Depute, in the room of Mr. *Robert Macfarlane*, appointed Sheriff of Renfrew.

RECENT DECISIONS IN THE SUPERIOR COURTS.

LORDS JUSTICES.

Thomson v. Partridge. Dec. 8, 1853.

EQUITY JURISDICTION IMPROVEMENT ACT.
—ENLARGING TIME TO CLOSE EVIDENCE.
—"SPECIAL LEAVE" UNDER S. 38.

Held, *allowing an appeal from Vice-Chancellor Stuart, enlarging the time for closing the evidence, on the ground that the affidavits had not been filed by the plaintiff until two days before the period fixed for closing the evidence would expire, and that the defendant had not been able to procure office copies until several days afterwards, that the grounds were not such special circum-*

stances, under the 15 & 16 Vict. c. 86, s. 38, as justified an order being made.

THIS was an appeal from an order of Vice-Chancellor *Stuart* (reported *ante*, p. 110), enlarging the time for closing the evidence on the defendant's motion, where the affidavits had not been filed by the plaintiff until two days before the period fixed for closing the evidence, and the defendant had been unable to procure office copies until after its expiration.

Daniel and *Selwyn* in support of the appeal; *W. M. James* and *Piggott*, contra.

The Lords Justices said, that according to the old practice the order to enlarge publication

could not be obtained unless upon affidavit that the applicant had never seen, read, nor been informed of the contents of the depositions taken, and there was nothing in the Act which destroyed that rule. The "special leave" in s. 38 of the 15 & 16 Vict. c. 86, could only be obtained on special application under special circumstances, and the appeal must therefore be allowed.

In re Pike, ex parte Pike. Dec. 22, 1853.

BANKRUPT.—APPEAL FROM COMMISSIONER REFUSING CERTIFICATE.—FILING AFFIDAVITS.—EVIDENCE.

The practice disapproved of, of bringing appeals from the Commissioner, refusing the certificate of a bankrupt, before this Court on affidavits filed instead of on the evidence before the Commissioner, having regard to the facilities afforded by recent enactments for taking the evidence viva voce.

On this appeal from the decision of Mr. Commissioner Bere, suspending the certificate of this bankrupt for 18 months, being ordered to stand over until the first day of bankrupt petitions in next term, for the purpose of filing affidavits in reply,

The Lords Justices said, that the practice of bringing such cases before this Court on affidavits filed, instead of on the evidence before the Commissioner, was by no means to be commended, and was to be discouraged, considering the facilities afforded by the recent enactments for taking the evidence *viva voce*.

Bacon and Messiter appeared for the bankrupt; Swanston for the assignee.

Master of the Rolls.

South Eastern Railway Company v. Submarine Telegraph Company. Nov. 11, 1853.

BILL OF DISCOVERY IN AID OF ACTION AT LAW.—MOTION TO DISMISS FOR WANT OF PROSECUTION.—ENTITLING.

Semble, that a bill of discovery in aid of an action at law, and for such other orders on the defendants as the nature of the case might require, should, notwithstanding the Orders of August 7, 1852, sched. B., be entitled a bill of "discovery," and not of "complaint," and on the answer being put in, a motion to dismiss for want of prosecution was accordingly dismissed, but without costs.

Piggott appeared in support of this motion to dismiss for want of prosecution this bill, which had been filed in aid of an action at law for a discovery of documents, and for such other orders on the defendants as the nature of the case might require—the answer having been duly put in.

G. Simpson for the plaintiff, contra.

The Master of the Rolls said, that the bill was properly one for a discovery only, and should, notwithstanding the Orders of August 7, 1852, sched. B., be still called a bill of "dis-

covery," and not of "complaint." The motion would be dismissed, but without costs.¹

Heath and another v. Lewis. Nov. 25, 1853.

FORECLOSURE SUIT AGAINST MORTGAGOR.—FILING TRAVERSING NOTE ON DEFENDANT NOT ANSWERING AS REQUIRED.

Held, that the plaintiffs in a foreclosure suit against the mortgagor, were entitled to file a traversing note under the 52nd Order of May, 8, 1845, upon his not putting in an answer although thereto required—the 15 16 Vict., c. 86, s. 26, and the 28th Order of August 7, 1852, not being applicable to such case.

H. F. Bristowe for the plaintiffs appeared in support of this motion, for leave to file a traversing note against the mortgagor in this foreclosure suit, upon his not putting in his answer as required, under the 52nd Order of May 8, 1845. He referred to the 15 & 16 Vict. c. 86, s. 26, which enacts, that "in suits in the said Court commenced by bill, where notice of motion for a decree or decretal order shall not have been given, or having been given, where a decree or decretal order shall not have been made thereon, issue shall be joined by filing a replication in the form or to the effect of the replication now in use in the said Court; and where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, he shall be considered to have traversed the case made by the bill," and to the 28th Order of August 7, 1852, which directs, that "where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill, so that under the 15 & 16 Vict. c. 86, s. 26, he is to be considered as having traversed the case made by the bill, issue is nevertheless to be joined by filing a replication in the form or to the effect of the replication now in use."

The Master of the Rolls said, that the section referred to did not apply, and the plaintiff was therefore entitled to proceed under the former practice and to file a traversing note.

York and North Midland Railway Company v. Hudson. Dec. 2, 1853.

APPEAL FROM CHIEF CLERK'S CERTIFICATE.—HEARING AT CHAMBERS OR IN OPEN COURT.

Held, that the certificate of the chief clerk at Chambers cannot be again objected to on appeal in open Court where such objections have been argued by counsel before the Judge at Chambers and overruled,—except in the case of a bona fide mistake or of other peculiar circumstances.

THIS was a motion on behalf of the defendant, to discharge or amend the certificate of the chief clerk in this suit. It appeared that objections had been already argued by counsel at Chambers, and disallowed.

¹ See *Woodcock v. King*, 1 Atk. 236.

Roll and Toller in support; *Solicitor-General*, *R. Palmer*, and *Hobhouse*, contra.

The *Master of the Rolls* said, that the 15 & 16 Vict. c. 80, did not give the right to dispute the certificate both before a Judge at Chambers and in open Court, except in the case of a *bond fide* mistake or of other peculiar circumstances. The proper proceeding was to move in Court to set aside or vary the certificate filed, on which a formal order, in conformity therewith, would be made, in order to enable the parties to appeal.

Vice-Chancellor Kindersley.

Procter and others v. Cooper and another.
Nov. 8, 1853.

JUDGMENT CREDITOR. — PRIORITY OVER PURCHASER UNDER TRUST FOR SALE. — NOTICE.

On advances being made by the clients of a certificated conveyancer, he had caused searches to be made for judgments, and it appeared from entries in the petty disbursements, that such were made on July 9 and 24. In the following October, the debtor conveyed certain property to the certificated conveyancer in trust, to secure his clients' advances, with a power of sale, and the defendant purchased under this power: Held, that as it was clear search had been actually made, and a judgment on a warrant of attorney to secure a loan from the plaintiffs' testator was entered on July 3, they were entitled in priority to the defendant.

It appeared that on July 3, 1847, judgment was entered by a Mr. Procter, on a warrant of attorney to secure a loan of 1,500*l.* against one Worley, and on July 7 judgment was also entered by a Mr. P. Smith, to secure the amount of a bill of exchange for 2,000*l.* which he had discounted, and on July 31, another judgment was entered by Mr. F. Beasley on a warrant of attorney to secure 2,000*l.* Certain property to which Worley was entitled, was then conveyed to Mr. Kirby, who was a certificated conveyancer, in trust to secure the amounts due to Mr. Smith and Mr. Beasley, with a power of sale, under which the defendant, Mr. John Cooper, purchased. This bill was now filed by the personal representatives of Mr. Procter, claiming in priority to the defendant. It appeared that Mr. Kirby had, prior to the deed of trust in October, 1847, caused search to be made by his clerks at the Common Pleas' Office for judgment against Worley, both on July 9 and 24, on which days entries were made in the petty disbursements, but there was no evidence as to whether the judgment against Mr. Procter was discovered or communicated to Mr. Kirby.

Baily and Cole for the plaintiffs; *Bacon* and *Bew* for the defendant.

The Vice-Chancellor said, as it was clear that search had been actually made and that judgment was entered, the plaintiffs were entitled to a declaration as sought.

Fitzhenry v. Bonner. Nov. 11, 12, 1853.

WILL. — TESTATOR. — GIFT IN TRUST FOR WIFE FOR HER AND HER SON'S SUPPORT, &c., UNTIL HE ATTAINED 21.

A testator gave the yearly interest of the residue of his personal estate in trust for his wife, for her and his son's support, clothing, and education, until he should attain 21, but if he should die under 21, the whole interest of his bank stock was given to the wife for life, with remainder on her death to the testator's reputed daughter: Held, on the son's death, after attaining 21, that there was an intestacy, and that the wife took one-third and the son's representatives the remaining two-thirds.

THE testator, Col. Herries, by his will, gave the yearly interest arising from the residue of all his personal estate and effects to trustees, upon trust for his wife, for her and his son's support, clothing, and education, until he should attain the age of 21 years, but if he should die under that age, he then gave the whole interest of his bank stock to his wife for life, and at her death, he bequeathed the whole of his property of whatsoever kind, to his reputed daughter, independent of any present or future husband. The testator's son attained 21 and died, and this petition was presented as to the construction of the will.

Bacon and *Karslake* for the representatives of the son in support; *Glasse* and *Eddis* for the daughter; *Campbell* and *E. F. Smith* for the widow; *Follett* and *H. Stevens* for other parties.

The Vice-Chancellor said, the interest was directed to be paid for the support of the wife and of the son, until he attained 21, but that no gift to him on attaining 21 could be implied, and there was therefore an intestacy. The widow would accordingly be entitled to one-third and the petitioners to two-thirds.

Boulcott v. Boulcott. Nov. 23, 1853.

WILL AND CODICILS. — CONSTRUCTION. — REVOCATION. — GIFT TO EXECUTOR.

*A testator, by his will, gave the residue of his freehold, copyhold, and personal estate in trust to his eight nephews and nieces, nominatim in equal shares as tenants in common, with a gift over to the survivors in equal shares on the death of any in his lifetime, or afterwards under the age of 21, without leaving issue, of the accruing as well as the original shares of each one so dying. By codicil, he revoked the gift as to two of the nephews, one of whom died during his lifetime after attaining 21 without issue, and the other having attained 21 and surviving. A niece also attained 21, and died in his lifetime unmarried: Held, that the shares of the two nephews, and their accruing share in the niece's share, passed to the heir-at-law and next of kin. The testator also gave 100*l.* to his executor, and afterwards he gave 500*l.* instead there-*

of, with the condition he should act in the executorship. The latter gift was revoked together with his appointment as executor : Held, that the gift of 100l. was not revived.

THE testator gave and bequeathed all his freehold, copyhold, and leasehold estate, together with all his personal estate and effects to trustees in trust, after payment of his debts and funeral and testamentary expenses, to his eight nephews and nieces (*nominatim*, including John A., Joseph, and Henrietta Boulcott) in equal shares as tenants in common, but if any one or more of them should die in his lifetime without leaving any child or children living at the time of his decease, or should survive him and afterwards die under the age of 21 without leaving any child or children, then the share, as well original as accruing, of each one so dying, should be in trust for the survivors in equal shares. It appeared that by codicils the testator revoked the trusts so far as regarded his nephews John A. and Joseph Boulcott, and confirmed in other respects his will, and that he had by a codicil given to Alexander Wylie, one of his executors, the sum of 100l., and afterwards by another codicil gave him a sum of 500l. in lieu and stead of the 100l. if he should act in the executorship and trusts, and by a further codicil he revoked his appointment as executor and trustee and the bequest of 500l.

This special case was now presented under the 13 & 14 Vict. c. 35, for the opinion of the Court as to the construction of the will and codicils, on the deaths during the testator's lifetime of Joseph Boulcott after attaining 21 and married but without issue, and of Henrietta, who died under 21 unmarried. John A. Boulcott had attained 21 and was still living.

Malins and Shapter for the plaintiffs; *Russell* and *G. Lake Russell* for the heir-at-law and next of kin; *Campbell* for Mr. Alexander Wylie; *Sumner* for the executors.

The Vice-Chancellor said, that the legacy of 100l. given by the former codicil without qualification was not revived by the subsequent gift of 500l., which was expressly given in lieu thereof with the condition he should act in the executorship, being revoked. As to the shares of the two nephews which were revoked, they passed to the heir-at-law and next of kin, since the limitations over to the other nephews and nieces were thereby also revoked, as also did the two-sevenths of the niece's share to which they would have been entitled.

Deacon v. Colquhoun. Nov. 25, 1853.

GIFT OF STOCK INTER VIVOS BY TRANSFER INTO JOINT NAMES.—WILL VOID BY ATTESTATION OF HUSBAND OF LEGATEE.—INTESTACY.

A testatrix, after giving by her will all her real and personal estate to her sister for her own absolute use and benefit, afterwards transferred bank stock into the joint names of herself and of her sister, in order "to

save trouble and the expense of legacy duty," and she received the interest until her death. The will having been attested by the sister's husband, was admitted to be void under the 7 Wm. 4, and 1 Vict. c. 26, s. 15 : Held, that the sister was entitled to the bank stock as on a gift inter vivos, and that it did not go among the next of kin as on an intestacy.

THE testatrix, by her will, gave all her real and personal estate to her sister, the wife of Mr. James Colquhoun for her own absolute use and benefit, and the husband attested the execution with another person. It appeared that the testatrix had afterwards transferred certain bank annuities into the joint names of herself and sister in order "to save trouble and the expense of legacy duty," and she received the dividends till her death. The will was admitted to be void under the 7 Wm. 4 and 1 Vict. c. 26, s. 15, by reason of the attestation by Mr. Colquhoun, and the plaintiff claimed to be entitled as one of the next of kin.

Campbell and *W. Hislop Clarke* in support; *E. F. Smith* for the other next of kin; *J. V. Prior* for the sister; *Bacon* and *H. Stevens* for the trustees.

The Vice-Chancellor said, that the object of the testatrix to save legacy duty could only be attained by a gift *inter vivos*, by such a disposition that her sister on surviving should have the beneficial interest, and the plaintiff's claim must therefore be disallowed.

Ex parte Vicar of Henham. Dec. 22, 1853.

RAILWAY COMPANY.—INVESTMENT OF PURCHASE-MONEY OF VICARAGE LANDS TAKEN.—NEW VICAR.—COSTS.

An order was made for the investment in other lands of the purchase-money of land taken by a railway company, and for payment of the dividends to the vicar. On his resignation, the new vicar petitioned for a like order : Held, that the railway company were liable to the costs of such second petition.

IT appeared that an order had been made in April last, on the petition of the Rev. Mr. Hawkes, then vicar of Henham, for payment to him of the dividends on the purchase-money of certain lands taken for the purposes of a railway company, and for payment of the purchase-money out of Court on his undertaking to invest the same in other lands within the parish. This petition was now presented for a similar order by the Rev. Mr. Belman, who had been appointed vicar on the resignation of Mr. Hawkes.

Glasse in support; *J. T. Wood* for the railway company, contra, as to the costs of this petition, on the ground the late vicar ought to have immediately invested the money, and the former order might have been varied by substituting the name of the present petitioner.

The Vice-Chancellor said, that although it might be a hard case on the company, they were liable to the costs of the petition.

Vice-Chancellor Stuart.

Anstey v. Hobson. Nov. 17, 1853.

MOTION TO TAKE BILL PRO CONFESSO. — INQUIRIES.—ORDERS 77 & 78 OF MAY 8, 1845.

On a motion to take a bill pro confesso, under Orders 77 & 78 of May 8, 1845. against a defendant who had absconded after appearance but without answering, and against whom an attachment had issued, to which non est inventus was returned, the Court required inquiries to be made of the parties and at the places where he might reasonably be heard of.

THIS was a motion to take pro confesso this bill, which had been filed in 1848, on the defendant having absconded after appearance but without answering. It appeared that an attachment had issued for want of answer, to which the sheriff had returned *non est inventus*.

Edward R. J. Howe in support, on an affidavit of the plaintiff's solicitor, that inquiries had been made for the defendant, referring to the Orders 77 and 78 of May 8, 1845.

The Vice-Chancellor said, that in order to show due diligence had been used the plaintiff should state he had made inquiries of the parties, and at places where he might reasonably be heard of.

James v. Gwynne. Dec. 6, 1853.

EVIDENCE.—PROOF OF DEED AT HEARING BY AFFIDAVIT OF ATTESTING WITNESS.

An objection to the admission of the affidavit of the attesting witness to a deed impeached by the answer, in evidence on the hearing to prove the deed, was overruled, although the affidavit might not, standing by itself, be sufficient evidence of the authenticity and due execution of the deed.

Bacon and Freeling appeared for the defendants, in support of an objection, which was taken to the affidavit of the attesting witness to a deed, impeached in the answer, being received on the hearing to prove the deed.

Wigram and Southgate for the plaintiff, contra.

The Vice-Chancellor said, that although the affidavit might not, standing by itself, be sufficient evidence of the authenticity and due execution of the deed, yet it was not to be rejected altogether, and the objection would therefore be overruled.

Vice-Chancellor Wood.

Liddeil v. Norton. Nov. 25, 1853.

MOTION TO PRODUCE DOCUMENTS PLEDGED WITH PAWNBROKER BY DEFENDANT BEFORE SUIT INSTITUTED.

A motion was refused for the production of certain documents by a defendant, where it appeared they had been deposited, together with other property, before the suit was instituted, with a pawnbroker, who refused to

deliver them up or to permit a schedule thereof to be taken without payment of the amount due to him.

Amphlett, on behalf of the plaintiff, moved for the production by the defendant of certain documents which it appeared she had deposited, before this suit was instituted, with other articles, with a pawnbroker of Norwich, who refused to give them up or to permit a schedule to be made thereof, without payment of the amount then due for principal and interest.

Burdon for the defendant, contra.

The Vice-Chancellor said, that under the circumstances set forth, the motion must be refused.

In re Matthews' Settlement. Dec. 1, 1853.

TRUSTEES' ACT, 1850. — APPOINTMENT OF NEW TRUSTEE OF LEASEHOLDS.—SERVICE OF PETITION ON LESSORS.

An order was made under the 13 & 14 Vict. c. 60, for the appointment of a new trustee of leasehold property and for a vesting order, on petition, without service on the lessors, where there was no covenant in the lease against assigning.

THIS was a petition for the appointment of a new trustee of certain leaseholds, and for a vesting order, under the 13 & 14 Vict. c. 60, s. 34, on the death of the surviving trustee intestate. It appeared that the petition had not been served on the lessors.

Fooks in support, cited 15 & 16 Vict. c. 55, s. 9.

The Vice-Chancellor said, that as there was no covenant in the lease against assigning, it was unnecessary to serve the lessors, and the order would be made as prayed.

Douglas v. Fellowes. Dec. 7, 1853.

WILL.—MISDESCRIPTION OF NAME.—CONSTRUCTION.

A testatrix, after giving a legacy of 300l. to "Commodore Peter Douglas, now or late of Portsea," gave a like sum to be equally divided among the "children of Peter Henry Douglas." There were two brothers, Commodore "Peter John Douglas" and "Henry Osborn Douglas." Held, that the children of the latter took under bequest.

THE testatrix, by her will, gave (*inter alia*) a sum of 300l, part of a sum of Bank Stock standing in the names of the defendants, the trustees under her marriage settlement, to "Commodore Peter Douglas, now or late of Portsea," and also a like sum to be equally divided between "the children of Peter Henry Douglas." It appeared that the plaintiffs were children of "Henry Osborn" Douglas, who was usually called "Henry" Douglas, and died before the testatrix, and the defendants were children of his brother "Peter John" Douglas, formerly commodore, but now an admiral in the royal navy. This claim was filed for payment of the legacy.

Cairns for the plaintiffs; *Wigram* for the defendants; *Hodgson* for the executors.

The *Vice-Chancellor* said, that extrinsic evidence could not be admitted to show the intention of the testatrix, and that if she had intended the legacy for the children of Commodore Peter Douglas, whom she had before so fully described, she would have referred to him as "the said," as she had done in respect of a bequest to the children of a legatee under a former part of the will. The testatrix had therefore used the name of "Peter" by mistake, and the plaintiffs were therefore entitled, —and the costs be borne by the estate.

Loosemore v. Knapman. Dec. 8, 1853.

JOINTURE UNDER MARRIAGE SETTLEMENT.
—REALTY PRIMARILY LIABLE FOR ARREARS.

Where a jointure under a marriage settlement was secured by a term for 500 years, and the trustees were directed, on its payment being in arrear, to raise the same during the term for better securing the payments: Held that the real, and not the personalty estate was the fund primarily liable for the arrears.

It appeared that on the marriage of Mr. William Knapman in 1833, he agreed to secure to his intended wife during her life, in case she should survive him, an annuity or yearly sum of 200*l.* by way of jointure and in bar of dower; and he accordingly appointed certain freehold property to the use of the trustees thereby named for a term of 500 years; and he covenanted that the 200*l.* should be duly paid by four equal quarterly payments on the usual quarter days; and there was a declaration that the trustees should permit and suffer the settlor, his heirs, appointees, executors, administrators, and assigns, to receive and take the rents until some default should happen in the payment; and in case any part should happen to be unpaid for the space of 40 days after it became due, the trustees were directed to raise the same during the term of 500 years for better securing the payments. The husband died in 1835, and by his will confirmed the jointure of 200*l.*, and on the death of his widow in 1852, it appeared that the payments were considerably in arrear, whereupon this suit was instituted by her personal representative to seek their payment out of the real estate.

Rolt and Elwin, in support, cited *Lanoy v. Duke of Athol*, 2 Atk. 444; *Lechmere v. Charlton*, 15 Ves. 193; *Graves v. Hicks*, 6 Sim. 398.

Glaspe and G. L. Russell, contra, on the ground the personal estate was primarily liable.

The *Vice-Chancellor* said, that as the whole arrangement was merely for the purpose of securing the jointure, and there was no anterior debt, and the personalty had received no benefit, the real estate was primarily liable.

In re Longworth's Estate. Dec. 12, 1853.

PAYMENT OUT OF COURT OF PURCHASE-MONEY OF LANDS TO DEVISEES OF REMAINDER-MAN ON DEATH OF TENANT FOR LIFE.—COSTS.

Order made for payment out of Court, on petition of devisees of remainder-man entitled on the death of a tenant for life to the purchase-money of land taken by a railway company, and held that the company were not liable to the costs of the appearance on such petition of the representative of the tenant for life, who claimed an apportionment of the dividends.

THIS was a petition for the payment out of Court of the purchase-money of certain land, taken by a railway company, and to which the petitioners were entitled under the will of the remainder-man upon the death of a tenant for life. The dividends had been paid to the tenant for life pursuant to an order of the Equity Exchequer in 1839.

Daniel and Woodhouse in support; *G. M. Giffard*, for the representative of the tenant for life, claimed an apportionment of dividends.

Little for the railway company.

The *Vice-Chancellor* said, that the claim of the tenant for life's representative could not be allowed, and the order would be made as prayed,—the costs of the representative of the tenant for life were not payable by the railway company under the 8 Vict. c. 18.

In re East's Trust. Dec. 13, 1853.

PURCHASE-MONEY OF LAND TAKEN HELD ON TRUST FOR SALE.—PAYMENT TO TRUSTEES.—SERVICE OF PETITION ON CESTUIS QUE TRUSTENT.

Lands, held on trusts for sale, with power to give receipts, after the death of a tenant for life, were taken by a railway company before the determination of the tenancy for life and the purchase-money was paid into Court. An order was made on the trustees' petition after the tenant for life's death, for payment to them out of Court of the fund, without service of the petition on the cestuis que trustent, on the company not opposing.

THIS was a petition for payment out of Court of the purchase-money of certain lands taken by a railway company. It appeared that the lands were held on trust for sale, after the death of the tenant for life, but that the railway company requiring the lands before his death had paid the purchase-money into Court under the 8 Vict. c. 18. The tenant for life was now dead.

Greene, for the trustees, in support.

The *Vice-Chancellor* said, that although the power to the trustees to give receipts was only applicable on a sale after the determination of the tenancy for life, the order might be made as prayed, as the railway company did not oppose, and the petition need not be served on the *cestuis que trustent*.

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PROSPECTS OF THE PROFESSION.

THE COUNTY COURT COMMISSION.

THE commencement of Hilary Term, and the near approach of the meeting of Parliament, combine to occupy the attention of the busy portion of the Profession, very much to the exclusion of considerations upon abstract or speculative questions.

The gloomy uncertainty which hangs over the future, has sensibly affected the trade and commerce of the country, and is not without a sympathetic effect upon the business of the Courts. The quantity of new business to be brought under the consideration of the Courts, both of Law and Equity, is described on all hands as unusually light, and a glance at the Court papers, recently published, will enable our readers to perceive that the number of cases standing for argument at the commencement of the Term is in no respect formidable.

There is some reason to believe that the County Courts, which were so injudiciously established in rivalry with the Superior Courts of Law, are sharing in the general depression of business, and that the returns for the year 1853 will show a considerable diminution of the number of plaintiffs entered in those Courts, as compared with the preceding year. The parliamentary paper, containing the statistics of the County Courts for the year 1852, was not long since issued; and, as compared with the year 1851, presents the following somewhat remarkable results:—

	1851.	1852.
Amount of money sued for	£1,624,916	£1,579,318
Amount of judgments obtained, exclusive of costs	815,514	797,997
Debts obtained without proceeding to judgment	100,194	107,979
Judges' Fees	83,970	84,390

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	1851.	1852.
Clerks' Fees	£ 83,970	£ 84,370
Bailiffs' Fees	63,215	59,773
Total amount of Fees	272,500	269,785
Received to credit of suitors	618,468	630,371
Paid to suitors	615,181	630,688
Total plaintiffs entered	441,584	474,149

It will be observed from this summary that in 1852 there was an increase in the number of plaintiffs entered of 32,565, and an increase in the number of causes *tried*¹ of 10,992, but notwithstanding this large numerical increase, there was a decrease in the amount of money sued for of 45,598*l.*, and the money for which judgment was actually obtained was 17,517*l.* less than in 1851. There was an increase of 7,785*l.* in money paid into Court without proceeding to judgment, an increase of 420*l.* in Judges' fees; Clerks' fees 400*l.*, and a decrease of 3,443*l.* in Bailiffs' fees. The number of plaintiffs entered with consent of both parties was 25, of which 19 were tried. The total number of appeals was 43, of which 8 decisions were confirmed, 13 reserved, 12 dropped, and 10 remained undecided when the return was made up. The amount of money for which judgment was obtained, as shown above, was 797,997*l.*, and the costs, including allowances to attorneys and witnesses, was 190,480*l.* There were 796 jury cases, out of which number 404 plaintiffs gained verdicts in their favour. The executions issued against defendants by the clerks was no less than 62,391; warrants of commitment 11,044, but of these

¹ There is a glaring mistake in speaking of the number of cases *tried* in the County Courts. Not two plaintiffs in a hundred are really "tried" in the usual sense of the term. They are cases without defence, and the only question is, how long time the Court will grant the defendant to pay the debt and by what small instalments?

only 5281 persons were actually taken to prison.

The returns for the year 1853 have not yet been completed, and will not be laid before the Public, in an authentic shape, until the Session of Parliament has been far advanced, or possibly terminated; but there is good reason to believe, that the result will show a diminution in the number of plaints entered, as well as in the amount of money sued for and the fees of Court. It probably would not be accurate to ascribe the diminished business of the County Courts wholly, or even in a great measure, to the indisposition of the general community to resort to Courts of Justice for the purpose of enforcing pecuniary demands, or asserting contested rights. The Common Law Procedure Act, which, as our readers are aware, came into operation on the 24th day of October, 1852, gave suitors in certain actions the election of resorting to the Superior Courts or the County Courts, in cases in which no defence was anticipated, and the suitors to whom this option was presented have, in many instances, preferred the Superior Courts of Law at Westminster. The inference to be drawn from this limited experiment is, that if the Superior Courts and the County Courts were equally accessible to suitors, the Courts presided over by Judges of the highest eminence, and which have obtained the confidence and respect of the community, would be universally resorted to in preference to the modern tribunals. At all events, now that the costs of proceedings in the Superior Courts have been reduced, all unnecessary proceedings abolished, and technicalities and the subtleties of special pleading, in great measure got rid of, the provision which operates as a practical prohibition against commencing actions in the Superior Courts, when the cause of action does not exceed 20*l.*, should be repealed, and suitors be placed in the position in which they stood before the passing of the Act 9 & 10 Vict. c. 95, of resorting to the Superior Courts whenever they thought fit, at least where the cause of action exceeded 10*l.*

It is to be hoped, that the consideration of this question has not escaped the attention of the Commission of Inquiry now sitting, in reference to the jurisdiction and practice of the County Courts. It has always struck us as anomalous and inconsistent, that gentlemen appointed to preside over Courts established avowedly for no other purpose than "the more easy recovery of *small* debts and demands," should

be invested with a varied and extensive jurisdiction in respect of matters of a totally different nature and character, requiring a greater range of legal acquirement and experience; and that the machinery suitable for a *Small Debts'* Court should be supposed to be so elastic as to adapt itself to all manner of questions which can become the subject of contentious litigation. The limits to which it is expedient the jurisdiction of the County Courts should be confined, we trust may now be defined, and the undivided attention of the Profession might then be advantageously directed to considering how far the practice of those tribunals could be improved, and how they might be rendered more effective auxiliaries to the Superior Courts in administering justice.

Judging from the questions which her Majesty's Commissioners for Inquiring into the County Courts have circulated, with a view to eliciting information from those who are supposed to be best acquainted with the subject, we should presume that the amendment of the practice and procedure was the chief object contemplated by the Commissioners, but the constitution of the Commission justifies the expectation, that an enlarged view will be taken of the question, and that the pretensions of the County Courts to compete with, or supersede the Superior Courts of Law, will be finally disposed of.

The following are the questions referred to, as issued by the County Court Commissioners:—

Local Jurisdiction.

1. Has any inconvenience arisen from the Local Courts of Record, like that of York, Southwark, &c., having concurrent jurisdiction with the County Courts?
2. Would it be convenient that such Courts should be abolished?

Judge.

3. Has any inconvenience arisen from the qualification of a deputy Judge, in point of standing at the Bar, being less than that of a Judge?
4. Has any inconvenience arisen from the Judge not being empowered to entertain *ex parte* applications though he be not sitting in Court at the time, and though he be out of the jurisdiction? (See s. 105 of 9 & 10 Vict. c. 95.)
5. Has any inconvenience arisen from the Judge not being empowered to change the venue to an adjoining district on special grounds, as for instance, in cases where he is personally interested, or where a jury being demanded he has reason to apprehend that a fair trial cannot be had?

6. Would it be convenient, that in the event of the Judge being prevented from holding the Court, the chief clerk, deputy, or assistant clerk should have power to adjourn the Court and the proceedings at his discretion?

7. Would it be convenient, that the Judge, clerk, or other officer of a County Court, should be entitled to sue and be liable to be sued in any adjoining district?

8. Would it be convenient, that the Judge should be empowered to suspend or discharge any subordinate clerk of his Court who has been guilty of neglect of duty, or other misconduct?

9. Has any inconvenience arisen from the early or late hours at which or to which the Court has sat?

10. What, in your opinion, is the earliest or latest hours at which and to which a Court should sit?

Officers.

11. Has any inconvenience arisen from the circumstance, that the subordinate officers of the County Courts are not bound to find security for the due performance of their duties? (See s. 36 of 9 & 10 Vict. c. 95.)

Clerk.

12. Would it be convenient, that there should be a resident chief clerk at every Court?

13. Would it be convenient, in the smaller Courts, that the offices of chief clerks and high bailiffs should be joined? (See s. 28 of 9 & 10 Vict. c. 95.)

14. What is the most usual day for entering plaints in your Court?

15. Does any and what inconvenience arise from the chief clerk, deputy clerk, assistant clerk, or high bailiff not being empowered to take affidavits with reference to the business of the Court? (See 13 & 14 Vict. c. 61, s. 23.)

15. Would it be convenient that all orders of Court should be delivered to the bailiff for service before the closing of the clerk's office on the following day?

Bailiff.

17. Would it be convenient that the bailiff of a Home Court should be permitted to serve process in any neighbouring district without the special order of the Judge? (See Rules 54 and 55, and 9 & 10 Vict. c. 95, s. 61.)

18. Does any and what inconvenience arise from the oath of the bailiff being necessary in every case to the service of process?

19. Would it be convenient that the oath should be dispensed with, treating the bailiff's indorsement as *prima facie* proof of the matters there stated and a false indorsement being made punishable as a misdemeanor?

Summons.

20. Would it be convenient to enable the plaintiff to sue in the district in which the defendant has had employment within six months before suit?

21. Would it be convenient to enable a plaintiff to sue a defendant in the district in

which any material part of the cause of action arose?

22. Would it be convenient to enable a plaintiff to sue in the district in which a defendant at the time of suit has employment?

23. Would it be convenient to enable the plaintiff to sue, in all cases, without leave of the Court? (See s. 60 of 9 & 10 Vict. c. 95.)

24. Has any inconvenience arisen from the present practice with respect to minors suing and being sued?

25. Has any inconvenience arisen from the practice with respect to successive summonses under Rule 41?

26. Would it be convenient that a summons should be in force for six months, the clerk altering the return day in the event of non-service?

27. Would it be convenient, that in the event of non-service of a summons, notice by pre-paid letter should be sent to the plaintiff, stating to what day the return is altered?

28. Would it be convenient, that in claims above 10*l.*, the practice of judgments by default should be introduced, if the defendant has been personally served, leaving it optional to the plaintiff to proceed in the ordinary way without personal service?

Special Defences.

29. Has any inconvenience resulted from the practice with respect to special defences required by s. 76 of 9 & 10 Vict. c. 95?

30. Would it be convenient that those notices should not be required?

Advocates.

31. Would it be convenient that the managing clerk of an attorney should be allowed to appear for a party?

Witnesses.

32. Would it be convenient that the County Court should be empowered to grant a *habeas corpus ad testificandum*?

33. Have you found the liability to be fined insufficient to compel the attendance of witnesses, and if so, what other power should be given the Court?

Evidence.

34. Would it be convenient to introduce into the practice of the County Courts the rules established by ss. 117-119 of 15 & 16 Vict. c. 76, with respect to the admission of documents, the proof of such admission, and notices to produce?

Jury.

35. Has any inconvenience arisen from jurors being selected by the clerk, if yes, who should select them?

Judgments.

36. Would it be convenient that judgments in the County Courts for sums of 10*l.* and upwards, should bear interest?

The various topics to which these questions refer, will be more conveniently discussed in a future publication.

THE ANNUAL CERTIFICATE TAX.

THE various questions of deep importance to the Public, which must come before Parliament at the commencement of its sittings, render it difficult to anticipate the precise time when it may be most expedient to renew the application for the further remission of the Certificate Tax. Its advocates will scarcely obtain a hearing in the midst of the discussions on the state of the Ministry;—on the question of Peace or War;—on the new Reform Bill, with all its consequences; and on the various projects of Law Reform.

It may be useful to remind our readers of the progress of this measure in Parliament:—

In 1850, there were *four* divisions in favour of the Bill—the majority being 19.

In 1851, the majority was increased to 30.

In 1852, there was a suspension of the agitation on account of the several changes in the Government.

In 1853, the majority was 52; and though a large majority then refused to take off the whole tax, 30,000*l.* a year was gained as the result of four years' struggle.

The future success of the appeal will depend on the united exertions of the Profession in town and country, as well in Ireland and Scotland as in England and Wales. We understand that of the answers which have been received from the provinces, there is a majority in favour of another motion in the next Session. But the parties aggrieved must be united in their efforts.

In our next Number we hope to announce the result of the correspondence which has taken place throughout the Profession. We think that, at all events, petitions should be in readiness to present from the principal cities and towns of the United Kingdom,—all parts of which are equally burthened with this unjust and unequal tax. Probably the first step should be to address the Chancellor of the Exchequer and ascertain whether he is disposed to yield any further relief.

GENERAL REGISTRATION OF DEEDS.

SUMMARY OF EVIDENCE BEFORE SELECT COMMITTEE.

ALTHOUGH we are assured that a new Commission on the Law of Real Property is about to issue, in conformity with the recommendation of the Select Committee of

the House of Commons, yet it is probable the subject of a General Registry of Deeds will be again discussed in the approaching Session of Parliament. We therefore deem it useful to present our readers with a summary of the evidence taken before the Select Committee of the last Session.

It will be recollected, that besides the Government Bill for establishing a General Register of Assurances, the Bills respectively introduced by Mr. Drummond and Mr. Scully¹ were referred to the same Committee of which those gentlemen were members, together with the Law Officers of the late and present Government. Mr. Mullings and Mr. Hadfield were also members of the Committee; and thus all parties were well represented.

The first three witnesses who were examined before the Committee are eminent Solicitors, namely, Mr. Strickland Cookson, Mr. Edwin Field, and Mr. William Williams; and we shall, at present, confine ourselves to a summary of their evidence.

Mr. Cookson stated, that the principle contained in the Bill before the Committee was, that it would be necessary to register everything affecting land, whether affecting the legal ownership or the beneficial ownership and every description of equitable interest; this principle is very objectionable. The expense of registering every instrument would be very considerable.

The registration or record of the legal title simply would be much preferable to the mode proposed in the Bill; in that way titles would be very much simplified; witness would simply register the legal fee of the property.

With regard to the case of *trustees* in every settlement of large estates, the settlements always contain a power to sell the whole of the property; witness would protect the parties beneficially interested by enabling the tenant for life to enter a caveat against the transfer or sale of that property by the trustees without notice to him. The tenant for life is usually the only protector of the property from the trustees making away with it. With regard to the entering of caveats upon the register, witness would adhere as closely as possible to the system adopted at the Bank of England; witness would put no restriction upon the person who should be allowed to enter caveats upon the register.

The registrar should give notice to the person who has entered the caveat that the person who has got the legal fee in the property purposes to sell it. Witness would propose to register simply the legal ownership of the land, and to protect the rights of all remainder-

¹ These Bills were reviewed at pp. 425, 445, of our last volume.

men and incumbrancers, by a system of caveats, to be verified by affidavit.

A separate register should be kept of *leases*, except occupation leases for terms not exceeding 21 years. Evidence generally with respect to leases granted by tenants for life; circumstances under which such leases become void on the death of the lessor. At present a very small proportion of the owners of large estates have got a perfect legal estate in them. Witness sees no objection to the protection of an interest in an equitable lease by a caveat, but the actual enjoyment under a lease would be a protection.

Witness proposes to register the legal title by preparing and executing a very short simple conveyance in fee, from the person who is owner in fee; this conveyance being registered with a map attached as a means of identifying the property. Having got the legal title on the register, when there are any equitable charges upon that property, caveats should be entered of those equitable charges. No notice that a person has purchased the property without registering the deed should affect a subsequent purchaser. The registration of deeds should be made compulsory, but witness would restrict it to transfers in fee. An investigation of title prior to the first entry upon the register would be indispensable, after which there would be no necessity for a purchaser to examine the title. The registrar would be bound to accept any conveyance tendered for the first time, and enter it upon the register; he would act ministerially; the parties entering a collusive deed would do so at their peril.

No purchaser will have to look for his title, during the existence of the register, to anything but the register for it. Every person with a beneficial interest in the property would enter a caveat as a matter of course. How far registration would shorten the investigations of title as to all the charges upon the property. There would be no difficulty whatever with respect to the execution of deeds under witness's proposed system of registration; there would be no occasion whatever for the executing parties to come to London. In the event of the payment of a charge, for which a caveat was lodged at the registry office, it would not be necessary to register the fact of payment, but simply to withdraw the caveat. No notice should be taken on the register of the amount for which the caveat was entered.

Observations then follow with respect to first and second mortgagees, and the powers that would be possessed by them under witness's proposal for entering caveats on the register against the estates mortgaged. Reference to the practice of bankers advancing money upon the deposit of deeds; in the event of the adoption of witness's suggestions as to registration, it would be necessary that the banker should search the register before he could lend money upon that equitable deposit. Witness conceives that if a man is in possession of title-deeds, it is clear and satisfactory evidence that he is the owner, but when a

caveat is entered against the property, it is a notice which absolutely inhibits him from dealing with the property whilst the caveat continues. If there is a caveat existing against the property, it is quite necessary that any person proposing to advance any further sum upon a further caveat should ascertain what is the amount of the previous liability in respect of it.

In the event of a person taking a second mortgage, he should give notice to the first mortgagee; he would not use due diligence in protecting his interest if he did not give such notice. All persons who have equitable interests in land should protect themselves by lodging a caveat; they could not protect themselves, so far as regards the sale of the property, otherwise, under witness's system. The caveats must be removed before the land can be transferred. Witness sees no objection that there would be in the case of land put in settlement to making the tenant for life himself one of the trustees, in whose name the land should stand. Stock at the Bank of England, to the extent of many millions, is standing under the control of the surviving trustee.

Witness would propose, in his plan, that the deed of conveyance should be attested by two witnesses, and that a deed should, before registration, be executed by the purchaser, and attested by two witnesses; that would be a great check against anything like forgery. The parties who had entered caveats against an estate would be protected in the event of the property being sold.

To carry out witness's suggestions it would be necessary to have an entirely new Bill; the present Bill could not be altered so as to embrace the two systems of registration. The manner in which the name of the heir or successor should be put upon the register, after the death of the owner of the property is described; there should be a registration of the death by the heir, and registration of the will. Then follow observations upon the subject of the registration of property vested in trustees; by witness's plan, he proposes to vest the legal estate entirely in trustees; when one trustee dies there should not be a new trustee, but a conveyance made to the surviving trustee.

LAW OF PATENTS.

AMENDMENT ACT.—PARTICULAR OF GENERAL USER OF INVENTION, S. 41.

To an action for the infringement of a patent, the defendant delivered, with his plea that the invention was not new, a particular of objection under the 15 & 16 Vict. c. 83, s. 41, that the invention was used "generally in London and the vicinity thereof," without naming any person or specifying any manufactory. A rule, which had been obtained on the ground this statement of user was too ge-

neral, for the delivery of further and better particulars, was discharged. *Alderson, B.*, said, "a defendant may rely either on a specified user by certain persons named, or on a general user by all persons at a particular place. In the former case, if he proves a user by any one of the persons named, that will support his objection; but if he rests his case on a general user, proof of a user by one person will not do." *Palmer v. Wagstaffe*, 8 Exch. R. 840.

ADMISSION OF EVIDENCE TO SHOW INVENTION CONSISTED IN NEW COMBINATION OF OLD MATTERS.

The defendant pleaded to an action for the infringement of a patent, that the plaintiffs were not the first and true inventors, and that the invention was not of any manner of new manufacture: *Held*, that the plaintiff was not precluded from giving evidence to show the invention did not consist, as might be inferred from the specification, in the use of several new matters, but in the new combination of several old matters, as the objection, which was open to the defendant to take to the specification of not having truly and correctly described the invention, had not been taken advantage of by a plea. *Bateman v. Gray*, 8 Exch. R. 906.

RIGHT OF APPEAL FROM DECISION OF COUNTY COURT JUDGE.

WHERE NO JURY.—13 & 14 VICT. C. 61, s. 14.—CONSTRUCTION OF.

In the case of *Cawley, app., Furnell*, resp., 12 Com. B. 291, a question was raised, whether the 13 & 14 Vict. c. 61, s. 14, contemplated an appeal from the decision of a County Court Judge when exercising the functions of both Judge and jury.

Maule, J., said,—“The Act clearly does not give an appeal in every case where a party is dissatisfied with the judgment of the Court; but only where the dissatisfaction is with the determination or direction in point of law. A determination or direction in point of law is, where a question is raised on demurrer or special verdict; and though such things are not, strictly speaking, in the County Court, something may take place there which is substantially the same. For instance, suppose a claim made in a County Court, which, upon the plaintiff's own showing could not in law be sustained,—or, if it were a claim for money

due upon a voluntary promise, without consideration, and the defendant were to object that such a claim could not be sustained in point of law; or, if the defendant, in answer to a claim of debt, were to rely for his defence upon the fact that the cause of action did not accrue within three years,—in each of these cases the determination of the Court would be a determination in point of law. The term ‘direction’ properly applies where the cause is to be determined by a jury, and the Judge directs them in a matter of law,—as, that a certain interest can only pass by an instrument under seal, and the like. In all these cases, the Statute gives an appeal. But, where the parties do not choose to separate the law from the facts, but leave the whole to be disposed of by the Judge, it may well be doubted whether the case is within the spirit of the enactment in question. It is often most desirable that a decision should be final, and subject to no appeal; as, in the case of arbitrators, it has long been settled, that where parties have selected one who is to put an end to all controversies between them, it is not competent to them to impugn his decision either as to the law or the facts; and it may very well be, that where parties leave the whole law and facts to be determined by the Judge of the County Court, they may be considered as having elected to put him in the situation of an arbitrator. If it is said, that this construction altogether disposes of the right of appeal, that objection may be answered by giving the words of the 14th section their reasonable import, and holding them to require a case where at least the law and the facts are separated from each other, so as to enable the Court of Appeal to see what the determination in point of law has been. It may be, that if, upon the case stated by the parties, or by the Judge, it appears to the Court of Appeal that the decision which has been come to can be sustained by a particular view of the facts which does not render it necessary to arrive at the conclusion that he has erroneously decided the point of law before him, this Court may have no power to review the judgment; yet that, when it is manifest from the facts stated, that, in order to arrive at the conclusion he has arrived at, the Judge must have decided a matter of law in a certain way, that will be a determination in point of law, with respect to which an appeal will lie. So that, supposing there be a judgment which can be sustained, consistently with the law, by any view that can be taken of the facts stated, such a judgment probably cannot be reversed; yet still, where the Judge states the facts which were before him, and those facts will sustain his judgment upon one view of the law only, and that an incorrect one, this Court may have jurisdiction to entertain the appeal.”

ADMINISTRATION OF OATHS IN CHANCERY.

Practical Directions to Commissioners to Administer Oaths in Chancery, being a Collection of Officially Recognised Forms of Jurats and Oaths, with explanatory Notes and Observations. By THOMAS W. BRAITHWAITE, of the Record and Writ Clerks Office. Stevens & Norton. 1854. Pp. 61.

This is a book of much utility, as well to the Commissioners for administering Oaths in Chancery, as to Solicitors who have to prepare jurats and mark exhibits. We cannot agree with Mr. Braithwaite's construction of the Act, which he supposes limits the power of the Commissioners to the administration of Oaths at their respective places of business; for, independently of the Act, the Lord Chancellor has power to grant Commissions, and in those which have been issued there is no such restriction.

We select the following Forms of Oaths and Jurats to Answers and Affidavits, as of ordinary occurrence:—

TO ANSWERS AND PLEAS.

Where one defendant only.—*Oath*: Is that your name and handwriting? You do swear that so much of this your answer [or plea, or plea and answer, *as the case may be*] as concerns your own acts and deeds, is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named, you believe to be true. *So help you God.*

Jurat: Sworn at _____ in the county of _____ this _____ day of _____ 185 .
Before me,
A. B.,

A London Commissioner to administer Oaths in Chancery.

Where two or more defendants.—*Oath*: Is that your name and handwriting? You do severally swear that so much of this your answer [or plea, or plea and answer, *as the case may be*] as concerns your own acts and deeds, is true to the best of your knowledge, and that so much thereof as concerns the acts and deeds of any other person or persons therein named, you believe to be true. *So help you God.*

Jurat:¹ Sworn by both [or all, *as the case may be*] the defendants, at _____ in the county of _____ this _____ day of _____ 185 .
Before me,
A. B.,

A London Commissioner to administer Oaths in Chancery.

TO AFFIDAVITS.

Where one deponent.—*Oath*: Is that your name and handwriting? You do swear that the

contents of this your affidavit are true. *So help you God.*

Jurat: The same as to an answer.

Where two or more deponents.—*Oath*: Is that your name and handwriting? You do severally swear that the contents of this your affidavit are true. *So help you God.*

Jurat:¹ Sworn by the deponents, C. D., E. F., and G. H., at _____ in the county of _____ this _____ day of _____ 185 .

Before me,

A. B.,

A London Commissioner to administer Oaths in Chancery.

EXHIBITS.

In a cause or matter.

In Chancery.

Between C. D., plaintiff,

and

E. F., defendant.

[or, In the matter of, &c.,

as the case may be.]

This is the paper writing marked A., referred to in the affidavit of G. H. Sworn in this cause [or matter], this _____ day of _____ 185 .

Before me,

A. B.

In other cases: This is the paper writing marked A., referred to in the affidavit of G. H. Sworn before me, this _____ day of _____ 185 .
A. B.

DECLARATION.

Declaration: Is that your name and handwriting? Do you solemnly and sincerely declare that the contents of this your declaration are true?

Attestation: Declared at _____ in the county of _____ this _____ day of _____ 185 .
Before me,
A. B.,

A London Commissioner to administer Oaths in Chancery.

QUERIES OF ARTICLED CLERKS.

RE-EXAMINATION.

I HAVE a clerk in my office who has been admitted nearly three years, but has never taken out his certificate. If he suffers more than three years to elapse without taking out his certificate, will he have to undergo a fresh examination, and to pay fresh fees on admission, if at some future time he wishes to have a certificate and to practise? J.

[The Judges have not fixed any precise period from admission, after which they will require a re-examination. If the party con-

¹ Separate jurats should be written where all are not sworn at the same time, and the names of the parties thus sworn be inserted.

tinues in the office of an attorney so as to keep up his knowledge of the law, we believe he will not be required to undergo a fresh examination. An absence for several years from the Profession,—perhaps seven or upwards,—would render it necessary to pass the ordeal again.—Ed.]

INTERVAL OF SERVICE.—FRESH STAMP.

In February, 1851, I was articled to a solicitor, and in August, 1853 (having been articled two years and a half), I was, in consequence of some unpleasantness, requested to leave. I did so, and part of the premium was returned, and an agreement given that the solicitor would assign me to any other person. I have now entered into arrangements with a gentleman to receive me. Will a fresh stamp be necessary? Must the interval be inserted in the assignment, and how?

P.

[The Stamp on Articles of Clerkship, which is now 80 $\frac{1}{2}$., will not be again required. The Stamp on the further Articles will be 35s. only and 5s. on the counterpart. The interval between the termination of the actual service to the first attorney and the assignment to the second attorney cannot be reckoned. That interval must be made up by subsequent service.—Ed.]

TRADING DURING CLERKSHIP.

Is there any rule or enactment preventing an articled clerk, during the existence of his articles, from being a partner in a trading concern, in the management of which he would not in any way interfere, nor would he be expected to devote any of his time to its superintendence or otherwise?

J.

[There is no legislative enactment or rule of Court against such trading, but it is very objectionable. If the emoluments of a solicitor are insufficient, and he is offered a profitable trade, he had better abandon the first and depend on the second. He cannot try causes and sell merchandize at the same time. We have heard of attorneys being partners (sleeping or awake) in banks and breweries, but cannot recommend such adventures, though wholesale may be less objectionable than retail trading.—Ed.]

COPYHOLD ENFRANCHISEMENT.

LICENSES TO DEMISE.

I CAN assure "Homage" I am a strenuous advocate for the total and immediate abolition of copyholds. I would, in short, go the "whole hog," and even include the Crown

manors and those of the Duchies of Lancaster and Cornwall, considering the last named as comprising the most oppressive, exacting, and unjust in the kingdom. And I rejoice to hear that the copyholders of the manor of Kennington are determined to make a strong and united effort in Parliament, when it assembles, to effect the object. It is true, the lord possesses the power, but he, or rather his agents, refuse to enfranchise, except on the most exorbitant and outrageous terms, such as no private lord of a manor would venture to demand. It is not difficult to imagine why they were excepted in the general Enfranchisement Acts.

I can assure "Homage" that the case put is not an hypothetical case, but one which actually occurred in practice within the last three years, and I am enabled to refer you or him to the solicitor who objected to the title, and in consequence the contract was abandoned. I consider licenses to fell timber to stand on a different footing; but I repeat,—lop off the whole, and the sooner the better.

AMICUS.

SELECTIONS FROM CORRESPONDENCE.

BANKRUPT LAW REFORM.

A CLIENT of mine advanced money on a brewery and the fixed plant thereof. The mortgagor has become bankrupt: and on examining the mortgaged premises, the mortgagee finds that the fixed plant is abstracted, some injury being besides done to the building by its removal, and the safety of his money thereby jeopardized. He knows not who has done this, but it is agreed on all hands that it was none other than the bankrupt himself. He finds further that he cannot be heard in opposition without proving his debt, and as incident thereto, giving up his security,—a proceeding equivalent to throwing away his money. Remedy by civil action against the bankrupt is of course out of the question: and as to criminal proceedings, which such a case richly deserves, the property having been in the order and disposition of the wrong doer, there is no ground for any, even if the creditor was willing to have the trouble of them.

It really seems to my humble capacity clear, that if our amateur law cobblers were to condescend to consult practical men of business on their schemes, they would be likely to serve the public to better purpose. It is not probable that my client's case is the only one of this kind that has happened: and one would think that a legislative enactment to meet such ones, would be productive of more benefit than the twaddle about the "class certificates" bankrupts are to receive, or long-eared projects of inserting provisions about "private trusts" into an Act of Parliament about "South Sea Stock."

A. C.

IRON HOUSES FOR THE POOR.

Considering that the Building Act directs

that newly erected buildings shall be of a certain thickness of walls, &c., I shall feel obliged by any of your readers stating, whether some cottages entirely built of iron and indestructible materials, are contrary to the Act or not? At present two exist, but isolated from other buildings, at the rear of the Allen's Head, Dulwich, and nothwards of the South Metropolitan Cemetery and are very comfortable, and peculiarly neat. If allowable, cottages might be built for the poor, containing four rooms, for about 40*l*.

AMICUS.

MOOT POINTS.

POSTHUMOUS HEIR-AT-LAW.

To the Editor of the Legal Observer.

SIR.—As the question of your correspondent, "An Inquirer," is a novel one, I have searched the authorities, and think the law of the point is as follows:—That the child born as "An Inquirer" has stated, would be considered the son and heir of *A*; for I find in note 7, 2 Saunders' Reports by Williams, p. 387, the following remark:—"Since the Statute (10 & 11 Wm. 3, c. 16), posthumous children are considered to all intents and purposes as *actually born*." If this be so, the moment *A* is dead his unborn child becomes in law his heir, and the subsequent marriage of the mother could not, I think, alter the heirship, for it is evident that in the case stated the second husband, *C*, could not have any share in the paternity of the child.

LEX.

Liverpool, December 15, 1853.

DISTRESS FOR RENT.—BROKERAGE.

A takes a house of *B*. at Midsummer, 1851, at a rent of 100*l*. a year. Nothing passes as to the payment of the rent half-yearly or quarterly, but *A* pays it regularly every quarter up to Christmas, 1852, taking receipts for the quarter's rent as the rent was paid. Two days after Lady Day, 1853, the landlord, without any previous demand, distrains for the quarter's rent, which is immediately paid, with 25*s*., the broker's charge,—he insisting on his right to demand a poundage at 5 per cent. on the rent claimed. Is such distraint legal? And can an action be maintained in the County Court to recover back from the broker the excess above a reasonable remuneration?

CIVIS.

LITERARY COPYRIGHT, &c.

The second section of the 5 & 6 Vict. c. 45, which is now the principal Act on the subject of Copyright, defines copyright to be "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is therein applied."

Does the expression "otherwise multiplying" preclude a master of a national school from lithographing on slips of paper, the several vocal parts of any musical compositions, for the use of his singing class in his school?

I apprehend that he might safely copy (manipulate) for the use of his class, as many parts as he required.

Such a question has not, I believe, been mooted: it is not likely that it has ever come before the Courts.

E. B.

LOCAL AND PERSONAL ACTS.

Declared Public, and to be Judicially Noticed.

16 & 17 VICT. 1853.

[Continued from page 180, ante.]

140. An act for making a Railway from the North Devon Railway at Fremington Pill to Bideford, to be called "The Bideford Extension Railway."

141. An act for the better paving, repairing, lighting, cleansing, watering, regulating, and improving such Parts of the Parish of Saint Mary, Whitechapel, in the County of Middlesex as are not within the Liberties of her Majesty's Tower of London and the City of London; and for paving, repairing, watering, and regulating certain Parts of other Parishes and Places adjoining; and for removing and preventing Nuisances, Annoyances, and Obstructions therein; and for raising Money for the Relief, Maintenance, and Employment of the Poor within the said Parish; and for raising Money for repairing the Church of the said Parish.

142. An act to enable the Great Southern and Western Railway Company to divert the Glamire Road Lower in the Parish of Saint Anne's Shandon in the County of the City or Borough of Cork, and to make a small portion of Railway in that parish; and for other purposes.

143. An act for making a Railway from Llanidloes in the county of Montgomery to Newtown in the same County, to be called the Llanidloes and Newtown Railway; and for other purpose.

144. An act to enable the Waveney Valley Railway Company to extend their Railway from Bungay to Beccles.

145. An act for altering and extending the Line of the Barnsley Branch of the Manchester, Sheffield, and Lincolnshire Railway Company; for extending the Time for the Completion of certain Works at Sheffield; for amending the Acts relating to the said Company; and for other purposes.

146. An act for amending the Acts relating to the "Llynvi Valley Railway Company," and for authorising the Company to make Diversions in and improve their Line of Railway and construct a new Branch, and for better regulating the Harbour of Porth Cawl and the Rates leviable thereat; and for other purposes.

147. An act to repeal the Act relating to the Nantwich and Woore Turnpike Road, and to make other provisions in lieu thereof.

148. An act to authorise the Extension of the Railway already partly executed between

Smithstown and Dalmellington in the County of Ayr to Dalmellington, and to the Glasgow and South Western Railway near Ayr.

149. An act to enable the Caledonian Railway Company to extend the Glasgow, Barrhead and Neilston Direct Railway to Crofthead; and for other purposes.

150. An act for confirming a certain Agreement entered into between the Furness Railway Company and John Abel Smith, Esq., and for enabling the Furness Railway Company to raise a further Sum of Money, and for authorising the Conversion of the borrowed and Preferential Share Capital of the Furness Railway Company into a Stock not exceeding 4l. 10s. per centum, and for amending the Acts relating to the said Company and Pile Pier.

151. An act to enable the Edinburgh and Glasgow Railway Company to connect their Line at Glasgow by Branches with the Caledonian Railway, and to extend their Station at Cowlawrs.

152. An act to sanction certain Arrangements between the Edinburgh, Perth, and Dundee Railway Company, and certain Classes of the Creditors thereof.

153. An act for enabling the Great Western Railway Company to construct additional Lines and Works, or for conferring further Powers on them in reference to the Henley and Uxbridge Lines, and other Parts of their Undertaking at Acton, Chippingham, and Reading; and for other purposes.

154. An act for incorporating the Lands Improvement Company, and to afford Facilities for the Improvement of Land by enabling the Company to issue transferable Mortgage Debentures.

155. An act for making a Railway from the Town of Saint Ives to the West Cornwall Railway at or near Saint Erth, with a Branch therefrom, and for making Arrangements with the West Cornwall Railway Company.

156. An act for dissolving the Canterbury and Whitstable Railway Company, and for vesting in the South Eastern Railway Company the Undertaking of the South Eastern and Continental Steam Packet Company, and for other purposes, and of which the Short Title is "The South Eastern Railway (Canterbury and Whitstable and Steam Packets) Act, 1853."

157. An act for conferring additional Powers on the London and North Western Railway Company with Reference to the Construction of their Oldham Branch, and for making an Alteration in such Branch; and for other purposes.

158. An act for the Purchase of the Bridge and Ferry over the River of Ross at the Town of New Ross, and for maintaining the same free of Toll, and for other purposes.

159. An act for repealing and amending an Act passed in the 13th and 14th years of the reign of her present Majesty, called "The British Electric Telegraph Company's Act, 1850."

160. An act to enable the London and North Western Railway Company to construct a Railway from Northampton to Market Harborough, with a Branch therefrom, all in the County of Northampton; and for other purposes.

161. An act to enable the London and North Western Railway Company to construct a Branch Railway to Saint Albans, and for other purposes.

162. An act to repeal the Acts for repairing the Roads from West Harptry to the Bath and Wells Turnpike Road at Marksbury, and other Roads therein mentioned, in the County of Somerset, and to make other provisions in lieu thereof.

163. An act to enable the East Lancashire Railway Company to extend their Railway to Rainford, to enter into Arrangements with the St. Helen's Canal and Railway Company, and to convert their Mortgage Debt into Annuities.

164. An act for amending the Acts passed for the Construction of the Basingstoke and Salisbury Railway, and for other purposes, and of which the Short Title is "The London and South Western Railway (Basingstoke and Salisbury) Act, 1853."

165. An act for authorising Arrangements for the Completion of the Birkenhead Docks.

166. An act for enabling the East London Waterworks Company to improve their Supply of Water; and for other purposes.

167. An act for the Improvement of the Borough of Halifax, and for other purposes, and of which the Short Title is "The Halifax Improvement Act, 1853."

168. An act for making a Railway from Limerick to Foynes.

169. An act for enabling the Llanelly Railway and Dock Company to make new Railways, and for other purposes, and of which the Short Title is "The Llanelly Railway and Dock Act, 1853."

170. An act to repeal the Acts relating to the Ribble Navigation Company, of the 1st year of the reign of her present Majesty, c. 8, and of the 7th year of the reign of her present Majesty, c. 1, and some of the provisions of the Act of the 8th and 9th years of the reign of her present Majesty, c. 116, which relate to the Company, and to make other provisions in lieu thereof respectively; and to grant further Powers to the Company for the Construction of Works, for providing Quays, for raising Capital, for levying Tolls, for regulating the Disposition of the reclaimed Lands, and for other purposes.

171. An act to enable the Whitehaven and Furness Junction Railway Company to make Branch Railways; and for other purposes.

172. An act to enable the Blyth and Tyne Railway Company to construct Branches in the County of Northumberland; and for other purposes.

173. An act for constructing and maintaining Docks and other Works at or near to Milford Haven, and for other purpose.

174. An act for making a Railway from Enniskillen to Sligo, with a Branch therefrom.

175. An act for providing additional Station Accommodation at Birmingham in connexion with the Birmingham and Oxford Junction Railway; and for enabling the Great Western Railway Company to use a portion of the Oxford, Worcester, and Wolverhampton Railway; and for making better provision with reference to the joint Station at Wolverhampton; and for other purposes.

176. An act to amend and enlarge the Powers and Provisions of "The Westminster Improvement Act, 1845," "The Westminster Improvement Act, 1847," and "The Westminster Improvement Act, 1850;" to extend the Time for the compulsory Purchase of Lands; to authorise further Improvements in the City of Westminster; and for other purposes.

177. An act to amend the Acts relating to the Birkenhead Dock Company, and to enable the Company to make a Railway for their Works, and for other purposes, and of which the Short Title is "The Birkenhead Dock Company's Act, 1853."

178. An act to authorise the Newport, Abergavenny, and Hereford Railway Company to make Deviations on their Extension to the Taff Vale Railway, and to make certain short Branches.

179. An act to authorise Deviations at Hereford and near Pontypool of the Newport, Abergavenny, and Hereford Railway, and to amend the Acts relating to that Railway.

180. An act for making a Railway to the Crystal Palace, with Branches to the London, Brighton, and South Coast Railway, and to the London and South Western Railway.

181. An act for the Improvement of the Parish of Chorley in the County of Lancaster.

182. An act for the more effectual Improvement of the Borough of Newcastle-upon-Tyne.

[To be continued.]

HILARY TERM EXAMINATION.

THE Examiners have appointed *Tuesday*, the 24th instant, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to examine the Candidates for admission on the Roll of Attorneys.

The Articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the Judges, must be left at the Law Society's Hall, on or before *Wednesday*, the 18th instant.

Where the articles have not expired, but will expire during the Term, the Candidate may be examined conditionally; but the articles must be left within the first seven days of Term, and answers up to that time. If part of the Term has been served with a *Barrister*, *Special*

Pleader, or *London Agent*, Answers to the Questions must be obtained from them, as to the time served with each respectively.

At the examination a Paper of Questions will be delivered to each Candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each Candidate is required to answer *all* the Preliminary Questions; and also to answer in *three* of the other heads of inquiry, viz.:—*Common Law*, *Conveyancing*, and *Equity*.

The Examiners will continue the practice of proposing questions in *Bankruptcy* and in *Criminal Law* and *Proceedings before Magistrates*, in order that Candidates who may have given their attention to those subjects, may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merit of their General Examination.

Under the new Rules of Hilary Term, 1853, it is provided that every person who shall have given notice of Examination and Admission, and "who shall not have attended to be examined, or not have passed the Examination, or not have been admitted, may *within ONE WEEK after the end of the Term* for which such Notices were given, *renew* the Notices for Examination or Admission *for the then next ensuing Term*," as he shall think proper;" but shall not be admitted until the last day of the Term, unless otherwise ordered. This Rule has been made in order to avoid the practice of giving double notices.

We used to read strange accounts in the newspapers of 800 Attorneys being admitted yearly. The real number averaged 400, of whom only 300 enter into actual practice and take out their certificates.

APPLICATIONS FOR TAKING OUT AND RENEWAL OF CERTIFICATES.

Hilary Term, 1854.

Queen's Bench.

On the 8th day of Term, 1854, pursuant to Judge's Order.

Steadman, Geo. Thos., 2, Norman's Bdg., Cannon Street Road, St. George's East.

On the last day of Term.

Beatniffe, Rt. Gray, Great Grimby
Hoskins, Thos., 11, Lower Grosvenor Pl., Eaton Sq.

Wilson, Thos., Warwick Crescent, Harrow Road; 7, Maida Hill.

ATTORNEYS TO BE ADMITTED.

Hilary Term, 1854.

Queen's Bench.

Added to the List pursuant to Judges' Orders.

Clerks' Names and Addresses.

To whom Articled, Assigned, &c.

Bailey, Arthur, 5, Berners St., St. Marylebone; Fulham; Southampton St.	Parsons & Burn, Mansfield; E. S. Bailey, Berners Street
Stebbing, John, Cheltenham; Tonbridge Wells; St. James's Chapel	E. White, Great Marlborough Street.

On the last Day of Term, pursuant to Rule of H. T., 1853.

Amery, J. Dickinson, Stourbridge; Peckham	R. Price, Stourbridge
Arundell, Rt., 9, Suffolk Pl., Islington; Pontefract	J. B. Girdlestone, deceased, Pontefract; R. Markland, Leeds
Battye, John, 25, Granville Sq.; Huddersfield	J. C. Fenton, Huddersfield
Beale, R. F. Whatman, Maidstone; Conduit St.; Everett St.; Featherstone Bldgs.	W. Beale, Maidstone; T. Marlow, Walsall; J. Kingsford, Essex Street
Bishop, Mortimer Sl., 39, Torrington Sq.; North Pl.	W. R. Bishop, Exeter
Carrick, Geo. Lowther, Vernon House; Lloyd Sq.; Brompton	R. R. Dees, Newcastle; W. Carrick, Brompton
Craven, Abraham, 60, Frith St., Soho; York	E. Peters, York
Edwards, Thos., 12, Clayton Pl., Kennington	J. Strutt, Buckingham St.
Head, John H. Horsford, 17, Bridgewater Sq.; Furnival's Inn	R. T. Head, Bedford Circus, Exeter
Henwood, Edw., 1, Stepney Green; Manchester	J. Makinson, Manchester
Holt, Chas., jun., 54, Holborn Hill; King St., High Holborn; Coventry	J. Holt, Coventry
Johnston, Patrick, 45, Great Russell St.; Fleet Street	W. S. Cookson, New Square
King, Wm. Warwick, 17, Size Lane	J. Linklater, Size Lane
Markby, Alfred, 6, Albert Pl., Kensington	T. Borrett, Whitehall Place.
Morley, Ebenezer Cobb, 47, Chancery Lane; Kingaton	C. H. Phillips, Kingston-upon-Hull
Peachey, Alfred, 3, Chester Terr., Regent's Park	J. Peachey, Salisbury Square
Pedley, Joshua, jun., Forest Gate, West Ham	J. Druce, Billiter Square
Rudge, Edm., jun., Norfolk Villas; Chepstow Pl.; Lower Calthorpe St.; Baker St.; Tewkesbury	J. Thomas, Tewkesbury

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

(Coram Lord Chancellor and L. J. Turner.)

In re Clerks of Records and Writs. Jan. 13, 1854.

OATHS IN CHANCERY ACT.—POWER OF COMMISSIONER TO ADMINISTER OATH ELSEWHERE THAN AT HIS PLACE OF BUSINESS.

Held, that a London Commissioner to administer Oaths in Chancery under the 16 & 17 Vict. c. 78, is empowered to administer the oath at the residence of the deponent or elsewhere within 10 miles of Lincoln's Inn Hall, and is not limited to his "place of business."

This was an application on behalf of the Incorporated Law Society, for a direction to the Clerks of Records and Writs to file affidavits, notwithstanding the oath is not administered at the place of business of the Commissioner.

vits, notwithstanding the oath is not administered at the place of business of the Commissioner.

By the Oaths in Chancery Act, 16 & 17 Vict. c. 78, s. 2, it is enacted, that "it shall be lawful for the Lord Chancellor from time to time to appoint any persons practising as solicitors within 10 miles from Lincoln's Inn Hall at their respective places of business to administer oaths," &c., "and to possess all such other powers and discharge all such other duties as aforesaid," that is (s. 1), as appertain to the office of Master Extra, "by virtue of any statute or order of the Court of Chancery or of the Lord Chancellor, or usage in that behalf or otherwise." And by s. 5, nothing in the Act contained "shall abridge or lessen the power of the Lord Chancellor, as it now exists, to appoint fit persons to administer oaths," &c.

It appeared that the commissions issued were in the following form:—"I, The Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain, by virtue of an Act passed in the session of Parliament holden in the 16th & 17th years of the reign of Her present Majesty, intituled "An Act relating to the appointment of persons to administer Oaths in Chancery, and to Affidavits made for purposes connected with Registration," and of all other powers enabling me in that behalf, do by these presents appoint

being a practising solicitor, whose place of business is within 10 miles from Lincoln's Inn Hall, to be a London Commissioner to administer Oaths in Chancery, so long as he shall continue to practise as a Solicitor within such 10 miles as aforesaid." It also appeared that Mr. Keith Barnes, one of the Members of the Council, to whom, among others Commissions, were granted, having to make an affidavit in the cause of *Ferlotti v. Lamley*, but being unable to leave his house on account of illness, had requested Mr. Coverdale, a brother Commissioner, another member of the Council, to call at his house and administer the oath, and that this was accordingly done, but on the affidavit being taken to Mr. Berrey, the Clerk of Records and Writs, he had refused to file it on the ground it was not sworn at the place of business of the Commissioner.

Bacon in support.

The Lord Chancellor directed, that affidavits sworn by the Commissioners within the limits of their authority, 10 miles of Lincoln's Inn Hall, shall be received and filed, although such affidavits be sworn at other places than the respective places of business of the Commissioners.

Lord Chancellor.

Ridgway v. Wharton. Dec. 20, 21, 22, 1853; Jan. 11, 1854.

SPECIFIC PERFORMANCE OF CONTRACT.—STATUTE OF FRAUDS.—DENIAL OF CONTRACT.—PLEA.

Held, on appeal from Vice-Chancellor Stuart, that, where under a parol agreement for the lease of a house, the letter which referred to the terms on which such agreement was entered into, but did not set them out, nor were they set out in any other instrument incorporated therewith, there was no sufficient contract in writing under the Statute of Frauds which could be enforced, and a bill for such specific performance was therefore dismissed, but without costs.

Held, also, that where the defendant denied the contract in toto, he was not bound to plead the Statute of Frauds.

This was an appeal from the decision of Vice-Chancellor Stuart, decreeing the specific performance of an agreement to grant to the plaintiff a lease for 21 years of the Greyhound Inn, Sydenham. It appeared that the plaintiff

held a sub-lease under Messrs. Meux, and had been in occupation for 17 years; and that in March, 1849, he had applied to the defendant for a renewal of the lease which expired at Midsummer, 1852, who thereupon referred him to Mr. Crawter, a land-surveyor. The plaintiff alleged that Mr. Crawter, as agent for the defendant, had agreed, at an interview in June, 1849, at Carshalton, to grant a lease for 21 years at 70*l.* per annum, the plaintiff to expend 600*l.* on the property, and on September 20, 1849, Mr. Crawter wrote to the plaintiff that the defendant's solicitor had been instructed to prepare the agreement for a lease according to the terms agreed upon, but had been unable to do so in consequence of press of business. It appeared that the value of the property was much increased by the new Crystal Palace at Sydenham, and notice to quit was served on the plaintiff. The defendant, by his answer, denied that Mr. Crawter was his agent for granting a lease, but only to arrange the terms on which it should be granted.

Mains and *W. D. Lewis*, for the plaintiff, cited *Skinner v. M'Donnell*, 2 De G. & S. 265; *Solicitor-General, Bacon, and Hemming* for the defendant. *Cw. ad. vult.*

The Lord Chancellor said, that it was unnecessary to decide, from the evidence in the case or the letters between the parties, the question whether Mr. Crawter had authority to enter into an agreement, inasmuch as there had been no binding contract in writing within the Statute of Frauds, and as the contract was denied altogether, the defendant was not bound to plead the Statute: *Cooth v. Jackson*, 6 Ves. 12, 36. The only letter capable of being construed as an agreement was that of Sept. 20, but the terms had not been reduced in writing, either wholly in the instrument or referring to some other writing incorporated therewith, and signed by the party sought to be charged, and the agreement was therefore not valid and in conformity with the Statute: *Clinan v. Cooke*, 1 Sch. & L. 32; *Dobell v. Hutchinson*, 3 A. & E. 355. The appeal would therefore be allowed and the bill be dismissed, but without costs.

Lords Justices.

— v. —. Nov. 26, 1853.

JURISDICTION OF EQUITY IMPROVEMENT ACT, s. 41.—EXAMINATION OF WITNESSES ORALLY BEFORE EXAMINER UNDER DECREE ON FURTHER DIRECTIONS.

Held, on application by direction of Vice-Chancellor Kindersley, that the Examiner has jurisdiction under the 15 & 16 Vict. c. 86, s. 41, to issue subpoenas for the attendance of witnesses before him to be examined orally, without any special order for the purpose, on the Judge communicating his desire for their evidence, which was required on additional inquiries directed by a decree on further directions, to be so taken.

It appeared that in this suit a decree had

been made on further directions for additional inquiries, and it was accordingly proposed to examine witnesses before the Examiner. This application was now made by direction of Vice-Chancellor Kindersley on the question, whether the Examiner had jurisdiction to issue subpoenas after decree without a special order.

By the 15 & 16 Vict. c. 86, s. 40, it is enacted that "any party in any cause or matter depending in the said Court may, by a writ of subpoena *ad test.* or *duces tecum*, require the attendance of any witness before the Examiner of the said Court, or before an Examiner specially appointed for the purpose, and examine such witness orally, for the purpose of using his evidence upon any claim, motion, petition, or other proceeding before the Court in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause;" and by s. 41, that "in cases where it shall be necessary for any party to any cause depending in the said Court to go into evidence subsequently to the hearing of such cause, such evidence shall be taken as nearly as may be in the manner hereinbefore provided with reference to the taking of evidence with a view to such hearing."

Baily in support.

The Lords Justices said, that the Examiner, on the Judge communicating his desire for the evidence to be taken orally, had jurisdiction under s. 41, without any special order for the purpose.

Master of the Rolls.

In re Cumming. Dec. 1, 1853.

RECEIVER OF ESTATE OF DECEASED LUNATIC.—APPOINTMENT OF, BY CONSENT.

An order was made, on motion by consent of all parties, for the appointment of a receiver of the estate, on the death of a lunatic pending proceedings to set aside the inquisition, on its appearing the person proposed was also approved of by all parties—and the tenants being doubtful as to whom to pay the rent due.

THIS was a motion with consent of all parties, for the appointment of a receiver of the estate, on the death of this lunatic pending proceedings to set aside an inquisition. It appeared that the tenants were in doubt as to whom payment of their rent was to be made.

Taylor in support, stated, the gentleman proposed was also approved by the parties.

The Master of the Rolls made the order as asked.

Atwater v. Atwater. Dec. 1, 1853.

WILL.—CONSTRUCTION.—ANNUITY, MAKING UP DEFICIENCY.—VESTING OF ESTATE.—RESTRAINT ON ALIENATION.

A testator gave to his niece an annuity from

his funded property for life, with remainder to her husband for life, and on both their deaths the capital to be divided equally among her five daughters and any other children afterwards born. He also bequeathed to her eldest son the family estate in Wiltshire to become his property on attaining 25, with a restraint against alienation, except to certain parties named. He likewise bequeathed a freehold house and premises, together with the furniture, on the death of the two tenants for life, to his niece's fifth son, together with certain other copyhold and leasehold property: Held, on special case under the 13 & 14 Vict. c. 35, that the deficiency in the annuity must be made up by the investment of a sufficient sum out of the residuary personal estate, that the devise to the eldest son vested immediately, subject to be divested on death under 25, and that the restraint on alienation was void, and that the fifth son only took a vested interest on the determination of the tenancy for life in the copyhold and leasehold property which passed in the meantime to the heir-at-law.

THE testator, by his will, gave to his only niece an annuity from his funded property during her natural life, with remainder to her husband for life, and, on the death of both, the principal to be equally divided between her five daughters and any other children afterwards born; and he also bequeathed to his niece's eldest son the family estate in Wiltshire to become his property on attaining 25, with an injunction never to sell it out of the family, or to any one except to one of the brothers therein-after named, and he further gave to two other of his relatives his freehold house and premises, together with his household furniture, for their use during the natural life of each, and on the death of both he bequeathed the same to his niece's fifth son to be retained in the family for ever, together with certain other copyhold and leasehold property named. The funded property being insufficient to produce the annuity, and points as to the construction of the will having been raised, this special case under the 13 & 14 Vict. c. 35, for the opinion of the Court.

Townsend for the plaintiff; *Whatley, C. Maret, C. T. Simpson, Jenkinson, Webb, and Bowring* for the defendants.

Cur. ad. vult.

The Master of the Rolls said, that the deficiency in the annuity must be made up by the investment of a sufficient sum out of the residuary personal estate. As to the devise to the niece's eldest son, he took a vested interest immediately, subject to be divested on his death under 25 (*Snow v. Poulden*, 1 Keen, 186), but the restraint on alienation was absolutely void. With respect to the devise to the niece's fifth son, he took no interest until the deaths of both the tenants for life, and the copyhold and leasehold property therefore passed to the heir-at-law in the meantime (*Rea v. Inhabitants of*

Ringstead, 9 B. & C. 218), and a declaration was made accordingly.

Vice-Chancellor Kindersley.

Bell v. Bell. Dec. 22, 1853.

DEATH OF PARTY AFTER ORDER TO DISTRIBUTE FUND.—VARIATION.

One of the parties interested died after an order to distribute a fund—an application was refused to vary the order by making the amount payable to such party or the legal personal representative, as in a creditors' suit—but held, that the insertion might be made, without application to the Court on motion, upon production to the registrar of the evidence of the death.

It appeared that in this suit, an order had been made to distribute a fund among the parties interested, and that one of them had since died.

Cotton appeared in support of an application to vary the order, by making the amount payable to such party or her legal personal representative, as in a creditor's suit.

The Vice-Chancellor said, that this application must be refused, but that the insertion might be made on motion without application to the Court, on the production to the registrar of evidence of the death.

Whitehead v. Bennett. Jan. 11, 1854.

REFERENCE AT CHAMBERS OF FURTHER INQUIRIES AND NOT TO MASTER.

Where further inquiries are directed, a reference will be made to Chambers and not to the Master, unless under special circumstances, although accounts had been previously taken in the cause by the Master.

This was an application, by the request of Master Tinney, to transfer this cause from his office to the Judge at Chambers, on further inquiries being directed.

C. C. Berkeley in support.

The Vice-Chancellor said, in future, unless there was some special reason to the contrary, every matter would be referred to Chambers, even though accounts might have been previously taken by the Master, and a decree made on his report; and the application was accordingly granted.

Vice-Chancellor Stuart.

Paramore v. Greenslade. Nov. 5, 1853.

SALE OF COPYHOLDS UNDER DECREE.—CONDITION OF SALE.—DEATH OF TRUSTEEN-TENANT ON ROLL.—EXPENSE OF ADMISSION OF HEIR-AT-LAW.

Copyhold property, sold under a decree with a condition of sale that the expense of all proper surrenders, conveyances, and assignments should be borne by the purchasers, was vested in a trustee who was tenant on the roll. Before he could surrender to the

purchasers, he died, and there was no negligence or improper delay on his part or on that of the purchasers: Held, that the trust estate was liable for the costs of the admission of the trustee's heir-at-law, in order to surrender to the purchasers.

It appeared that certain copyhold property, of which the legal estate was vested in Mr. Paramore as trustee, had been sold under a decree, but that he died before surrendering to the purchasers. Under the conditions of sale the expense of all proper surrenders, conveyances, and assignments, were to be borne by the purchasers. A question now arose on the title having been accepted and the purchase-money paid into Court, as to who was liable to the costs of admitting the trustee's heir-at-law, in order to surrender to the purchasers.

Cairns for the heir-at-law; *J. D. Chambers* for the *cestuis que trustent*; *Cory* for the purchasers.

The Vice-Chancellor said, that as there had been no negligence or improper delay in obtaining the trustee's surrender on the part of the purchasers or of the trustee, and before the purchase was completed the trustee who was tenant on the roll had died, the expense should be borne by the trust estate.

Phillipps v. Barker. Dec. 8, 1853.

WILL.—CONSTRUCTION.—OMISSION OF CHRISTIAN NAME OF LEGATEE.—EVIDENCE AS TO INTENTION OF DONOR.

A testatrix gave a sum of stock in trust for Mrs. S. Davis for life, and on her death, in trust to transfer the same to "— Davis," her daughter. It appeared the testatrix had only seen this daughter, the present plaintiff, and was not aware at her death that Mrs. Davis had two other daughters: Held, that the plaintiff was entitled to the bequest.

THE testatrix, by her will (*inter alia*), gave a sum of 500*l.*, 3 per cent. consols, in trust to pay the dividends to Mrs. S. Davis for life, and on her decease, in trust to transfer the same to "— Davis," her daughter. It appeared that at the date of the will, Mrs. Davis had two other daughters, but that several years before, Mrs. Davis had visited the testatrix with the plaintiff, then the only daughter, to whom she promised to leave the sum as in the will, and that no further communication had passed between the parties until the death of the testatrix.

Bacon and *Karslake* for the plaintiff; *Pitman* for the residuary legatee, on the ground the bequest was void for uncertainty, and fell into the residue; *Shapter* and *Selwyn* for the trustees.

The Vice-Chancellor said, that as the plaintiff was the only daughter the testatrix had ever seen or known of, and evidence was admissible to supply the imperfect description, the plaintiff was entitled to the bequest.

Vice-Chancellor Wood.

Herries v. Griffith. Dec. 1, 1853.

MORTGAGE IN POSSESSION.—INJUNCTION RESTRAINING ACTION OF EJECTMENT AGAINST TENANT.—PARTIES.—CO-HEIRS OF MORTGAGOR.

The plaintiff had purchased the interest of one of the co-heirs of a mortgagor in the equity of redemption, and had tendered the amount considered due pursuant to a notice of such intended payment, on an account which was asked not being delivered: An injunction was granted to restrain the defendant, the mortgagee in possession, from bringing an action in ejectment against a tenant of the mortgagor, on the plaintiff's undertaking to amend his bill by making the other co-heirs, who were also interested in the equity of redemption, parties, and to serve them with the copy bill.

Rolt and Berkeley, on behalf of the plaintiff, moved to restrain the defendant, the mortgagee in possession, from bringing an action in ejectment against the tenant of the mortgagor, from one of whose co-heirs the plaintiff had purchased. It appeared that the plaintiff had given notice to pay off the mortgage, and that on the account, which was also asked by the notice, not being delivered, the plaintiff had tendered the amount which he considered to be due in respect of principal, interest, and costs, and he now offered to pay the same.

Willcock and Renshaw for the defendant, contra, on the ground the other co-heirs, who were interested in the equity of redemption, should be made parties.

The Vice-Chancellor said, that an order would be made for an injunction to restrain the defendant from proceeding with the action, on the plaintiff undertaking to amend by making the other co-heirs parties, and to serve them with the copy bill.

Groves v. Groves. Dec. 2, 1853.

EQUITY JURISDICTION IMPROVEMENT ACT. S. 18.—INSPECTION OF DOCUMENTS BY PLAINTIFF'S WITNESSES.

A motion on behalf of the plaintiff for the production of documents, under the 15 & 16 Vict. c. 86, s. 18, for the inspection of his witnesses prior to their being examined, was refused, where such documents had been deposited with the solicitor of the defendant, who was a claimant in a previous suit against the present plaintiff to administer the estate of the testator's brother, with liberty to the plaintiff to inspect the same, and held, that such documents could not be inspected, otherwise than according to the former order.

THIS was a motion in this administration suit, on adjournment from Chambers, for the production of certain documents to the witnesses of the plaintiff for inspection, under the

15 & 16 Vict. c. 86, s. 18,¹ prior to their being examined. It appeared that the documents in question had been deposited with the solicitor of a claimant against the estate, pursuant to an order by consent in a previous cause against the present plaintiff, to administer the estate of the testator's brother, with liberty to him to inspect and to take copies.

Boyle in support; Bacon and J. V. Prier, contra.

The Vice-Chancellor said, that the documents could not be inspected otherwise than according to the former order, at the office of the claimant's solicitor.

In re Moore. Dec 3, 1853.

PETITION UNDER TURNER'S ACT, TO SET APART PORTION OF PROCEEDS OF REAL ESTATE TO MEET CONTINGENT LIABILITIES UNDER S. 23.

A petition was refused to set apart under the 13 & 14 Vict. c. 35, s. 23, a portion of the proceeds of certain real property about to be sold by an executor, pursuant to a trust for sale in the event of the personal estate being insufficient to pay debts and legacies, to meet certain contingent liabilities on the estate found by the Master's report on a reference on petition for accounts, &c., under such Act.

THIS was a petition under the 13 & 14 Vict. c. 35, s. 23,² to set apart a portion of the pro-

¹ Which enacts, that "it shall be lawful for the Court, upon the application of the plaintiff in any suit in the said Court, whether commenced by bill or by claim, and as to a suit commenced by bill, whether the defendant may or may not have been required to answer the bill, or may or may not have been interrogated as to the possession of documents, to make an order for the production by any defendant, upon oath, of such of the documents in his possession or power relating to matters in question in the suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just."

² Which enacts, "that in case any contingent liability shall be allowed by the said report or by the said Court, it shall be lawful for the said Court, by order, to be made upon the application of the executors or administrators, by motion or petition, on notice to the person who may have established such contingent liability, to order such sum of money, part of the estate of the deceased person, as to the said Court shall seem just, to be set apart and appropriated for answering such contingent liability, and to give such directions as the said Court shall think fit touching the payment of such sum of money into Court, and the investment thereof; and the payment, application, or accumulation of the interest and dividends thereof in the meantime and until the same shall be required to answer such liability, and when such liability shall be ascertained or determined to give such directions as to the payment of such sum out

ceeds of certain real property about to be sold by the executor of a testator pursuant to a trust for sale in the event of the personal estate being insufficient to discharge the debts and legacies, in order to meet certain contingent liabilities on the estate according to the report of the Master on a reference for an account of the debts, &c., being directed on petition under the above Act.

W. H. Terrell in support.

The *Vice-Chancellor* said, that as the Act was not applicable to real estate, the petition must be refused.

Court of Queen's Bench.

In re Justices of Bristol. Jan. 11, 1854.

RULE ON JUSTICES TO CONVICT AND PUNISH UNDER LOTTERY ACT.—PRACTICE.

A rule was refused under the 11 & 12 Vict. c. 44, s. 5, on justices to convict and punish a prisoner under the Lottery Acts, where it appeared they had decided and dismissed the case, although upon an erroneous decision of the law.

This was a motion under the 11 & 12 Vict. c. 44, s. 5, for a rule nisi on the above justices to convict and punish one Henry King, under the Lottery Act, 42 Geo. 3, c. 119.

By that Act, s. 2, it is enacted, that every person keeping any place for a lottery "shall be deemed a rogue and vagabond within the true intent and meaning of an Act passed in the 17 Geo. 2, c. 5, and shall be punished as such rogue and vagabond accordingly." The 3 Geo. 4, c. 40, repealed the 17 Geo. 2, c. 5, and by the 5 Geo. 4, c. 83, after reciting the 3 Geo. 4, c. 40, it was enacted (a 1) that "all provisions heretofore made relative to idle and disorderly persons, rogues and vagabonds, incorrigible rogues or other vagrants in England, shall be and the same are hereby repealed, except as to any offence committed before the passing of this Act, which shall be punished under the provisions of the said recited Act, and save and except as hereinafter excepted." It appeared that the justices had heard the case and found the facts, but had discharged the prisoner, on the ground that the Lottery Act was repealed.

Attorney-General in support, referred to s. 21 of the 5 Geo. 4, c. 83, which enacts that "wherever by any Act or Acts of Parliament now in force, it is directed that any person shall be punished as an idle and disorderly person, or as a rogue and vagabond, or as an incorrigible rogue, for any offence specified in such Act or

Acts, and not hereinbefore provided for by this Act, in every such case, whether such person shall or shall not have committed any offence against this Act, every such person shall be punished under the provisions, powers, and directions of this Act."

The Court said, that however erroneous the decision of the justices was, as they had decided and dismissed the complaint, the rule must be refused.

Queen's Bench Practice Court.

(Coram Crompton, J.)

In re Justices of North Staffordshire, ex parte Overseers of Skelton. Nov. 25, 1853.

HIGHWAY ACT.—SIGNATURE AND ALLOWANCE OF RATE UNDER S. 27. — WHEN INSUFFICIENT.

A rule nisi was refused on justices to issue their distress warrant for payment of a highway rate, where it appeared the signature and allowance of the rate by the surveyor and justices under the 5 & 6 Wm. 4, c. 50, s. 27, was in the middle of the rate-book, and the rate in question followed such allowance, which was of "the foregoing rate and assessment."

Scotland appeared in support of this motion for a rule nisi on the above justices to issue a distress warrant on the North Staffordshire Railway Company to enforce the payment of a highway rate and assessment. It appeared that the surveyor and justices had signed under the 5 & 6 Wm. 4, c. 50, s. 27,¹ but by inadvertence in the middle of the rate-book instead of at the end and before the rate now sought to be enforced, as follows:—"We, &c., do hereby consent to and allow the foregoing rate and assessment."

The Court said, that there was no sufficient allowance of the rate, and the rule nisi for the issue of a distress warrant would accordingly be refused.

Court of Exchequer.

In re ———, Gent, one, &c. Nov. 25, 1853.

RULE NISI TO STRIKE ATTORNEY OFF ROLL FOR MISCONDUCT. — PERSONAL SERVICE OF RULE NISI.

A rule nisi to strike an attorney off the Roll of this Court for misconduct on similar rules having been granted in the Queen's Bench and Common Pleas, was enlarged—where the service had been on the attorney's son at the attorney's residence and place of business,—in order to effect personal service.

This was a rule nisi to strike an attorney off

of Court as the said Court shall deem right: Provided always, that no order to be made as aforesaid shall in any manner bind the assets so appropriated as against the persons entitled to the estate of the deceased subject to the contingent liability; and any person interested in such appropriated assets may apply to the Court touching the same as he may be advised."

¹ Which enacts, that "every such rate shall be signed by the said surveyor, and allowed by two justices of the peace, and published in the same way as poor-rates are now allowed and published."

the Roll of this Court for misconduct, upon rules for a like purpose having been granted in the Courts of Queen's Bench and Common Pleas, and on which he had been struck off the Rolls of those Courts. It appeared that service of the rule nisi had been made on the attorney's son at the attorney's residence and place of business, and that the son had stated he would give the rule to his father.

Atherton now moved to make the rule absolute, no cause having been shown.

The Court said, that as the service must be made personally, the rule would be enlarged for such service to be made.

Wilkinson, resp., v. Figg., app. Jan. 11, 1854.

COUNTY COURT APPEAL.—SIGNATURE OF CASE BY JUDGE.—RULE TO STRIKE OUT APPEAL.

A rule was discharged, with costs, to strike out an appeal from a County Court Judge, on the ground that two copies of the case had not been left at the Rule Office within three clear days from its signature and sealing, under the 163rd County Court rule, where it appeared the Judge had refused to sign, upon the parties not consenting, the fair copy case, which had been

unable to be presented at the time, and had signed the draft which was to include certain documents.

A RULE nisi had been obtained in this case to strike out an appeal from the decision of the Judge of the Oxford County Court in a plaint to recover the value of a horse sold with a warranty, but afterwards turning out to be unsound, on the ground that two copies of the case had not been left at the Rule Office within three clear days of the Judge's signing and sealing the case under the 163rd rule of the County Courts. It appeared that the Judge had signed the draft case on July 1 last, to include certain documents, which were in the possession of attorneys at Witney, and the case could not be completed until July 4. The rule had, on November 14 last, been enlarged in order to have a proper case signed under the 13 & 14 Vict. c. 61 (reported 23 Law J., N. S., Exch. 5). The Judge now declined to sign such case, on the ground that, as the parties would not consent, he could not, being *functus officio*, substitute the new for the former case.

Bramwell showed cause against the rule, which was supported by Cripps.

The Court said, the rule must be discharged, with costs.

ANALYTICAL DIGEST OF CASES,

SELECTED AND CLASSIFIED IN ALL THE COURTS.

House of Lords.

APPEALS.

AMALGAMATION.

See *Railway*.

CANAL ACT.

Copyhold.—Statutory conveyance.—Trustee.
—An Act of Parliament incorporated certain persons as a company for the purpose of making a canal, and gave them powers to purchase and hold lands for the purposes of the Act; it authorised persons to "contract for, sell, and convey their lands," gave a form of conveyance "of all the estate, right, title, and interest" of the persons conveying, and enacted that all such contracts, agreements, sales, conveyances, and assurances should be valid to all intents, &c. S. was tenant of copyhold land, a portion of which was wanted for the purposes of the canal; he sold it to the company, and executed a conveyance according to the form given by the Act. The land was then applied to the purposes of the canal. On the death of S. the lord made a proclamation for the heir of S. to come in and be admitted as a tenant on the rolls of the manor. No one appeared to claim admittance, and the lord seized the land *quousque*. He afterwards brought ejectment against the canal proprietors, and obtained judgment against them on the ground that the conveyance under the Canal Act had only vested in them an equitable es-

tate in the copyhold land. He then interfered to stop the course of the navigation. The canal proprietors filed a bill against him, praying that the customary heir of S., or such other person as the plaintiffs might appoint, might be admitted to the copyhold premises, the plaintiffs undertaking to pay the fines and fees upon such admission; and further praying for a perpetual injunction and general relief. The Vice-Chancellor made a decree directing that the customary heir of S. (who had been made a party to the suit) should be admitted tenant to the copyhold premises in question, and when admitted should hold the same as trustee for the plaintiffs in the suit, and the amount of fine was referred to the Master, and an injunction was granted as prayed.

Held, that the decree of the Vice-Chancellor was right. *Dimes v. Grand Junction Canal Company*, 3 H. of L. 794.

CANAL.

Waste water.—Compensation to forge owner.
—A canal, formed under a private Act of Parliament, had three levels, of which A. was the highest, B. the middle, and C. the lowest level. The canal proprietors (though without authority under their Act to do so) erected engines between the C. level and the plaintiff's mill forge, and pumped back the water, which, after serving the purposes of navigation in levels A. and B., had flowed into level C. In 1826, a new Act, repealing former Acts, and

re-enacting their provisions, with certain alterations and additions, was passed. The 15th section gave the canal proprietors authority to maintain engines, &c., for supplying the canal with water, and for that purpose to have reservoirs and feeders supplied from all brooks, streams, &c., from which they were lawfully supplied before the passing of the Act, and "from time to time to raise the water of the canals from one level to another, or to any reservoirs; and for any of the purposes aforesaid to use such engines as they should think proper, making full satisfaction for all damages to be sustained by the owners of any mills, forges, brooks, streams, &c., taken, used, removed, diverted, or injured," in execution of the powers of the Act. By the 80th section, the canal proprietors were forbidden to take for the use of the canal any water out of the river above the plaintiff's forge, and they were directed to maintain flood-weirs, so that all water running into level C., not required for the purposes of the canal, should flow into the river above the plaintiff's forge. The proprietors pumped up, as before, the water out of the level C. back into the level A.; in consequence of which, except on extraordinary occasions, no water escaped over the weirs into the river:

Held, that they were entitled to do so, and that such pumping back of the water from one level of the canal to the other, did not give the plaintiff a right to compensation under the Act. *Ellwell v. Birmingham Canal Navigation Company*, 3 H. of L. 512.

COPYHOLD.

See *Canal Act*.

COSTS.

See *Irish Registration Act*.

EVIDENCE.

See *Peerage*.

IRISH REGISTRATION ACT.

Purchaser.—Settlement.—Constructive trustee.—Indemnity.—Improvements.—Costs.—Under the Irish Registration Act, 6 Anne, c. 2, an equity in a grant which is registered, will prevail against the right even of a *bond fide* purchaser, to whom the original grantor has subsequently sold part of the property comprised in the registered deed.

A deed contained recitals, which described two persons as concurring in settling property, to which they were "respectively entitled." It afterwards contained a grant to trustees of a certain part of this property, as if made by one of these persons, when in fact that part belonged to the other. The memorial of the deed described both as the granting parties; this description was not one of the things required by the Statute:

Held, not to vitiate the effect of the memorial under the Registration Act.

In 1830, a settlement of certain property held under renewable leases, was made in favour of A. In 1831, A., being about to marry, made

a settlement of this property for the uses of the marriage. The deed of 1830 was not registered. The settlement of 1831 was registered. In 1840, A., being in actual possession, sold to B., and B., who had no actual notice of the settlement of 1831, entered into possession, and made alterations in the premises. After the death of A., his son, who was entitled under the settlement of 1831, filed a bill against B., to set aside the sales, for an account, and for waste:

Held, that it was not necessary to register the deed of 1830, that the registered settlement of 1831 prevailed against the *bond fide* purchase of B., and that the Court below had properly declared him to stand possessed of the leases as a trustee for the parties beneficially interested under that settlement.

But *held* also, that he was entitled to indemnity against the covenants in the leases which he was thus declared to hold as trustee; that an inquiry ought to be made as to alleged improvements and as to alleged waste; and that he was entitled to be allowed the benefits of those improvements; and that, being a *bond fide* purchaser, without misconduct, he ought not to be charged with costs. *Mill v. Hill*, 3 H. of L. 828.

Cases cited in the judgment: Lord Saye and Sele, 10 Mod. 40; Threlhew v. Ellesdon, 2 Ventr. 141; Haselwood v. Mansfield, ib. 196; B. of Gloucester v. Wood, Winch, 46; Bushell v. Bushell, 1 Sch. & Lef. 90; Drew v. Lord Norbury, 8 Ir. Eq. Rep. 171; Warburton v. Loveland, 2 Dow. & Cl. 480; Jack v. Armstrong, 1 Hudson & B. 727; Honeycomb v. Waldron, 2 Str. 1064. Stuart v. Ferguson, Hayes, 1r. Ex. Cas. 452; Mackenzie v. York Building Company, 8 Bro. P. C. 42.

JUDGE'S DISABILITY FROM INTEREST.

Enrolment of decree.—A public company, which was incorporated, filed a bill in equity against a landowner, in a matter largely involving the interests of the company. The Lord Chancellor had an interest as a shareholder in the company to the amount of several thousand pounds, a fact which was unknown to the defendant in the suit. The cause was heard before the Vice-Chancellor, who granted the relief sought by the company. The Lord Chancellor, on appeal, affirmed the order of the Vice-Chancellor.

Held, that the Lord Chancellor was disqualified, on the ground of interest, from sitting as Judge in the cause, and that his decree was therefore voidable, and must consequently be reversed.

Held, also, that the Vice-Chancellor is, under the 53 Geo. 3, c. 24, a Judge subordinate to, but not dependent on, the Lord Chancellor; and that, consequently, the disqualification of the Lord Chancellor did not affect him; but that his decree might be made the subject of appeal to this House.

Before a decree made by the Vice-Chancellor can be appealed against, it is required to be enrolled. The enrolment is the act of the Lord Chancellor.

Held, that the act of enrolment, though performed by a Lord Chancellor disqualified by interest from adjudicating in the cause, was not affected by his disqualification, but was valid for the purpose of bringing up the appeal to this House. *Dimes v. Grand Junction Canal Company*, 3 H. of L. 759.

Cases cited in the judgment : *Brooks v. Earl of Rivers*, Hardr. 503; *Company of Mercers and Ironmongers of Chester v. Bowker*, 1 Stra. 639; *Wood v. Corporation of London*, 12 Mod. 669, 686.

PEERAGE.

Evidence.—An Irish earldom was created, and a holder of that earldom was afterwards created a viscount of the United Kingdom; the patent granting the viscounty described the grantee by the name and title of the Irish earldom. On the death of one holder of these titles, his eldest son received a writ of summons to attend the House of Peers as an English viscount. He did so, and took his seat as a viscount. He subsequently petitioned to have his claim to vote for representative peers of Ireland allowed, and it was allowed. After his death, his son received a writ of summons as an English viscount, and took his seat in that character. He then petitioned to be admitted to vote for representative peers of Ireland in virtue of the Irish earldom. The petition came on before the Committee for Privileges. The patents creating the Irish earldom and the English viscounty, the writ of summons to the previous viscount, and the entry on the journals showing that the preceding peer had taken his seat, and likewise the resolution of the Committee for Privileges admitting his claim to vote for representative peers, were all proved.

Held, that this was not sufficient to establish the title of the present claimant; that the evidence must be such as would of itself, if the claim was now made without reference to any previous claim, be sufficient to establish it.

Such evidence not being producible at the moment, the consideration of the claim was adjourned. *Earl of Donoughmore's claim*, 3 H. of L. 822.

PURCHASER.

See *Irish Registration Act*.

RAILWAY COMPANY.

Amalgamation.—A company for making a railway from Dublin to Mullingar was incorporated by an Act of Parliament passed in July, 1845 (8 & 9 Vict. c. cxix.), under the name of "The Midland Great Western Railway Company of Ireland." Some of its directors provisionally registered another company for making a railway from Mullingar to Galway, to be called "The Galway and Mullingar Junction Railway Company." Three months afterwards this name was altered at the Registration Office to "The Midland Great Western Railway Company of Ireland (extension from Mullingar to Galway)." Most of the directors of the two companies were the same. L. applied for and received scrip certificates in the extension company, and paid deposits thereon, and received receipts headed with the altered name, and signed the shareholders' agreement and parliamentary contract. The Midland Great Western presented, in its own name and under its corporate seal, a petition to Parliament for an Act to make a railway from Mullingar to Galway, undertaking, at its own expense, to make the railway. The Act, which was passed upon this petition, in July, 1846 (9 & 10 Vict. c. ccxxxiv.), only gave authority to make the railway from Mullingar to Athlone, or but a part of the distance. The directors had power under the Act to raise the necessary sums "by contributions among themselves or by the admission of other parties." The additional capital required for the extension was directed to form "part of the general and original capital of the company;" and the provisions of the recited Act (that of 1845), were to extend to and be read with the new Act. The expression "the company" in the new Act, was declared to mean the Midland Great Western Company. In September, 1846, at a meeting of the directors of the Midland Great Western Company, a resolution was passed, stating on what terms the holders of the extension scrip should be entitled to certificates in the joint company, and another resolution approving of and confirming those terms. At that meeting the seal of the Midland Great Western Company was affixed to the shareholders' book, which, however, did not then contain the names of the shareholders in the extension line. The latter were added in March, 1847, when one of them, that of the defendant, was inserted. Three calls were made; the first was dated previous to the insertion of the extension subscribers in the shareholders' book, and the second after that insertion. An action was brought for these calls:

Held, that the Act did not amalgamate the two companies; and that even if the directors possessed a power of amalgamation, the resolution of September, 1846, was not an exercise of that power, so as to render the defendant liable to an action for any one of the calls at the suit of the Midland Great Western Company. *Midland Great Western Railway Company of Ireland v. Leech*, 3 H. of L. 872; *Same v. Edmonds*, ib. 898; *Same v. Johnston*, ib. 898.

SETTLEMENT.

Term for certain use.—Avoidance by new term.—If a man has a limited interest in a term and settles it to a certain use, and then gets a new and extended term substituted for it, he cannot, by so doing, avoid the previous settlement. *Mill v. Hill*, 3 H. of L. 828.

TRUSTEE.

See *Canal Act*; *Irish Registration Act*.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JANUARY 21, 1854.  
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THE ANNUAL CERTIFICATE TAX.

RESULTS OF THE SESSION OF 1853.

IN reminding our brethren that the time is fast approaching when it will be necessary to determine upon the expediency of immediately renewing, or of postponing to a more favourable opportunity, the claim to a further remission of this objectionable annual impost, we should consider the language of lamentation, with reference to the results of the last Session, as inappropriate and misplaced. Considering the Certificate Tax merely in the light of a pecuniary burthen, the Act of 1853, which diminished the amount in the proportion of five and twenty per cent., is simply matter for congratulation. The positive gain to the Profession of Mr. Gladstone's measure was no less than 30,000*l.* a year, and those who know how difficult it would be to raise such a sum for the furtherance of any professional object, however desirable, and how much might be effected by the judicious application of even a moiety of that amount, will probably agree with us, that in the present state of the Profession, the pecuniary benefit arising from the measure of last Session, should not be regarded as altogether insignificant. We are well aware, however, that many who cordially joined in and powerfully aided the efforts made during the last four years to obtain a repeal of the duty, based their opposition upon *principle*, without any reference to the *amount* of the tax, whilst others, who regarded the amount of the tax as a comparatively inconsiderable item of office expenditure, felt it incumbent on them as matter of duty, to assist their less fortunate brethren in obtaining relief from an unjust burthen.

Appreciating, and in some sense participating in all those views, we regard the arrangement sanctioned by Parliament at the instance of ministers last Session, as unsatisfactory and inconclusive; but we are at a loss to conceive how any one can truly describe it as a "terrible" defeat, or a damaging, "possibly a destructive blow."

As to that portion of the arrangement by which the duty on Articles of Clerkship has been reduced from 120*l.* to 80*l.*, when suggested by the Chancellor of the Exchequer, it was opposed on the ground that it afforded no relief to the Profession, for the benefit, if any, was conferred, not upon the members of the Profession, but upon those who were about to enter into it. The objection to the proposition to reduce the duty on Articles of Clerkship was not, that it was a salutary tax or necessary for the protection of the Profession, but that it, afforded no relief to those who were complaining, and operated as a gift to those who were not suffering any pressure. It pleased Mr. Gladstone, however, to resolve that the interests of the public, for the purpose of a "freer competition," were best consulted by reducing the duty on Articles of Clerkship, and he had sufficient influence in the House of Commons to carry out his views in this particular.

To consider this as "a destructive blow" to the Profession, is indicative of a singular obliquity of judgment. Apart from financial considerations, nobody, we presume, contends that the parent or guardian of a gentleman intended for the Profession of an attorney, should be compelled to pay a sum to the Government, any more than if the gentleman was intended for the Church, the Military, the Diplomatic, or the Medical Profession. In truth, the sum of 40*l.*, the amount by which the duty on Articles of Clerkship has been reduced, forms so insignificant a proportion of the total expense

incurred in becoming an attorney and solicitor, that we shall be much surprised to find the name of any individual upon the Roll, who would not have been there if the law remained as it stood before the Session of 1853. It is grossly disparaging to the Profession to suppose that any such tax is necessary to secure its respectability, or to prevent the intrusion of improper or of a *low class of men*.

The expediency of establishing a higher educational test is a fair question for discussion and consideration; but it is equally unjust and offensive to insinuate that those who are admitted as attorneys have not had "the education of gentlemen in addition to the special knowledge of their Profession." We are quite satisfied that amongst this branch of the Profession there are as many educated men—*gentlemen* in the best sense—as could be found amongst the Medical Profession, or—without meaning it disparagingly—at the Bar.

To that branch of the Legal Profession which was more directly interested in the struggle for the repeal of the Certificate Duty, we can see nothing humiliating in the result of the last Session of Parliament. A total repeal of the tax was asked for, and a partial reduction was obtained, without compromising any principle, and without any understanding, express or implied, that a demand for the total repeal would not be repeated and enforced with all the perseverance and vigour which men engaged in a just cause could bring to bear upon such a question. The humiliation and discredit did not attach to the attorneys, or to those who supported their cause. Upon public, still more than upon professional grounds, we were concerned to find, that an instalment of justice was grudgingly and ungraciously conceded by those in authority, and it was not calculated to inspire increased respect for the representative branch of the Legislature, when so many, who had by their previous votes declared the demand of the solicitors and attorneys to relief to be well founded, at once altered, not perhaps their views, but their votes, to meet the requirements of party. Carefully noting and contrasting the conduct of certain learned members upon this question, when unfettered, and again when acting under the supposed obligations of office, it may be doubted whether, for the corrupt and degrading influences which prevailed in the days of Walpole and Lord North, others have not been substituted as fatal to public honour and principle.

Politics are not within the province of this Journal, and it has never yet been turned into an instrument of personal attack. We quit this disagreeable part of the subject, therefore, by observing, that the tergiversation and inconsistency exhibited by certain members of the House of Commons, as evidenced by their votes on the Solicitors and Attorneys' Bill, go far to reconcile us to a very considerable change in the constitution of that branch of the Legislature, and that at the next general election we hope to find a large proportion, if not all of those who so meanly and weakly betrayed the interests of their professional brethren, deprived of the opportunity of time-serving and place-hunting, and their seats filled by honester as well as abler men.

REMOVAL OF THE COURTS FROM WESTMINSTER.

WE hail the intelligence, which has already been communicated by the daily papers to our readers, of the result of the interviews granted by the Prime Minister and the Chief Commissioner of Public Works to the Council of the Incorporated Law Society, on the proposed Removal of the Courts from Westminster Hall to the centre of the Law District. It seems clear that the Government will now undertake this important measure, which is scarcely inferior to any subject that may occupy the attention of Parliament. The press is now thoroughly aroused, and no doubt the various details of the subject,—embracing the enormous inconvenience sustained at Westminster, and the vast advantages of bringing the whole administration of Justice, judicial and official, under one roof,—will be brought to the notice of the Public, and if any objection be raised, founded on the ancient attachment to Westminster Hall, it will be readily removed. The present small, inconvenient, and ill-constructed Chambers (not one-fourth enough in number) *must* be taken down. Where can they be removed to, and three times as many other Courts, and ten or twenty times as many rooms and offices, be constructed? Certainly not adjoining the old Hall of Rufus, nor in its immediate neighbourhood. As a new site must be found, we anticipate that the one proposed, between the Temple and Lincoln's Inn, will, beyond all doubt, be selected.

The "ways and means" appear to be readily forthcoming, and the amount re-

quired may be reduced one-half by purchasing only sufficient to form the actual site of the Courts, leaving the completion of the rest of the plan to a future period.

The following is the report of the deputation to the Government :—

A deputation from the Incorporated Law Society, consisting of Mr. Kinderley, President, Mr. Sudlow, Vice-President, with Mr. Coverdale and Mr. Keith Barnes, Members of the Council, and Mr. Maugham, Secretary, attended the Earl of Aberdeen at his official residence in Downing Street, on Monday, the 16th instant, by appointment, on the proposed Removal of the Courts from Westminster to the neighbourhood of the Inns of Court.

The deputation stated briefly the grounds on which they supported the measure ;—the insufficient number of the present Courts,—there being only five rooms of moderate size and two small ones, whilst not less than 15 or 16 were requisite, including Courts for the Lords Justices, the Master of Rolls and the new Vice-Chancellors, with several Courts of Nisi Prius and Appeal,—so that the application was not merely for a removal of the present Courts, which were ill-constructed and without sufficient accommodation for the Judges, the Bar, or for jurors, witnesses, suitors, and attorneys, but for the construction of not less than eight new Courts, with convenient rooms and offices. The great inconvenience was adverted to of the site, distant one mile and a half from the centre of the Law District, and occasioning a consequent delay and expense in the transaction of business. It was also urged, that a favourable opportunity had now occurred for clearing the site of the present insufficient Courts, and appropriating it to the completion and improvement of the Houses of Parliament.

It was also proposed to concentrate all the offices of the several Courts of Law and Equity under the same roof.

Lord Aberdeen expressed a very favourable opinion on the subject,—admitting both the inconvenience and insufficiency of the present Courts, and the great public improvement which would be effected by their removal to the neighbourhood of the Inns of Court. His Lordship also stated, that he had communicated with the Lord Chancellor, and that the measure had his sanction. He added, however, that it was an undertaking of the greatest importance, and required much consideration, particularly as to the means of defraying the expense.

The deputation explained the various

means by which it was proposed to raise the requisite fund,—namely, by the sale of the several offices now occupied in different parts of the Inns of Court and Chancery,—by the saving of the rent of numerous other offices,—by the value of the site of the present Courts,—but especially from a limited portion of the accumulated fund in the Court of Chancery, which had arisen, in the shape of interest, from the investment of the surplus cash and dividends,—but to which the suitors had no legal claim.

His Lordship observed, that the appropriation of part of that fund would require consideration ;—he would investigate the subject and have an early interview with the Chancellor of the Exchequer.

The deputation also attended Sir William Molesworth, the *Chief Commissioner of Public Works*, by appointment, at four o'clock the same day, when the plans and estimates were produced, and full explanation given of the inconveniences sought to be removed, and of the advantages to be obtained, both on the part of the suitors and the public generally, by the purchase and appropriation of the proposed site.

Sir William Molesworth carefully examined the plans, inquired into the sources from which the expense was proposed to be defrayed,—intimated that it had long been his opinion that the Courts should be removed to the place proposed, and promised to give his favourable attention to the subject.

REGISTRATION OF ASSURANCES.

EVIDENCE BEFORE SELECT COMMITTEE.

Mr. Edwin Wilkins Field gave evidence relative to the registration of titles of property in the colonies ; we have no colonies which do not require registration of this kind. Opinion that such a system as is proposed in the first part of the bill would involve the titles of this country in inextricable confusion, and that it would be quite ruinous to the owners of property if that system were applied. The effect of the Bill upon building societies would be very mischievous, and would tend greatly to check them. The trouble and expense of investigating titles would be enormously increased by the establishment of registration. The value of landed property is greatly deteriorated by the extreme difficulty in dealing with it ; facilitating the transfer would increase the value. Witness fully concurs in the evidence of Mr. Cookson.

“Great advantage would result from the adoption of such a scheme for simplifying the

title to and transfer of, and for registering landed property, as proposed by Mr. Cookson. Grounds for the opinion that there will be very much less fraud with regard to land than stock. Opinion that litigation and the number of distringases and suits arising out of them, will be much greater with regard to stock than would arise from land. Observations with respect to equitable rights at law; the equitable owners for life, or any equitable interest whatever, which through the medium of a Court of Equity should entitle the party to the possession of land, should be recognised by law. Witness sees no reason why the Courts of Law should not recognise equitable rights, for the purpose of allowing ejectments or other such legal proceedings to be based upon them.

Mr. Cookson's scheme is almost adopting the copyhold mode of transfer without the lord's rights, and keeping a number of court rolls. Opinion that any system of registration can never be carried out or made to work, without having a real representative established as well as a personal upon death. Witness would allow the legal representative of the last trustee to go as a matter of right, and to register himself as owner of the property which was registered in the name of that trustee. The present law with regard to the transfer of stock having worked satisfactorily for so long a time, witness would enact with regard to land what is now the law as to stock.

Supposing there is an infant heir-at-law, witness would take away the rights of that infant, and vest the control of the property in the personal representative. Cases of intestacy are very rare. Witness considers that it would be well to make the registration compulsory; it might be made voluntary in the first instance, but compulsory afterwards. A small charge should be made to persons getting the benefit of this Parliamentary title. The same difficulty has arisen with regard to Irish titles as with regard to colonial titles. The conveyance of an estate in one of the registered counties in England is attended with more expense than in an unregistered county; in some cases it is quite impossible to make a proper search.

The security in registered counties is not greater than in non-registered counties; in some cases it is certainly less. Supposing the Registration Bill to be adopted, the expense of making out titles would be greatly increased. Under the proposed Registration Bill, the expense of conveyances would be increased, and the transfer of land greatly checked. With respect to building societies, the proposed Bill would operate very injuriously against them. Under Mr. Cookson's simple mode of transfer, landed property would become a much more marketable and manageable article than it was before.

Mr. Cookson's plan is simply a registry of legal titles, and not of deeds, as proposed in the present Bill. Witness believes that a registry of titles would be of great value in improving the marketable value of all lands, but

that a registry of deeds would be a great detriment.

Mr. William Williams, partner in the firm of Currie, Woodgate & Williams, of Lincoln's Inn. Witness considers Mr. Cookson's scheme of registration is a very good one. In 1847 a scheme somewhat similar to that of Mr. Cookson's was proposed by Mr. Wilson to the Real Property Commissioners, and referred to witness for his consideration; witness returned the scheme to Mr. Hayes, pointing out certain objections therein. The Committee ought to come to some conclusion as to the particular object for which registration is desirable, before they decide upon the best mode of registration. Mr. Wilson's scheme is more fully explained in the evidence given before the Real Property Commissioners. Witness agrees with the plan suggested by Mr. Cookson, but considers there are some points not quite sufficiently brought out.

The ownership that witness would place on the register would be that of either the fee, or of the rentcharge, or of the lease; those being practically the only interests, which are now the subject of sale. There should be separate indexes to the different interests registered; each index should refer to the others; the index of the land would refer to the separate index of rentcharges affecting that land, or leases affecting that land. Witness would exclude the beneficial interest altogether from the register, as it could be protected by means of caveats or distringases. Provision should be made with respect to what notice should be sent to persons who had entered caveats if the property against which those caveats were entered, was about to be disposed of; great latitude must be given to the registrar.

Probably it would be necessary that the registrar should be directed to frame rules with the concurrence of the Lord Chancellor, or some other of the Judges, to regulate what should be the notice in ordinary cases. Reference to the rules which regulate distringases in the Court of Chancery, with respect to beneficial interests in stock. Notice given by the Bank of England to persons who may have lodged distringases against stock of the sale of that stock; there is no regulation as to what should constitute a notice, as between the Bank and the person lodging the distringase. The Real Property Commissioners expressed themselves in their report as precluded by the terms of the commission from entering upon the subject of registration as proposed by Mr. Wilson.

The scheme of Mr. Cookson presumes that a Bill for simplifying the title of lands in England would pass as a necessary preliminary to registration. Nature of the preliminary Bill which it would be necessary for the Legislature to pass before they could prudently adopt a system of registration of assurances. Witness would exclude from the register the owner of the legal estate in tail, because, under the term leasehold is to be included leaseholds for lives.

With regard to equitable interests, they should be vested in trustees, and the trustees entered on the register as the owners. The owners of the beneficial interests would be sufficiently protected under Mr. Cookson's scheme.

Evidence as to the alterations necessary to be made in the present Law of Tenure, before carrying out the proposed system of registration. Observations with respect to the power of sale to be possessed by the registered owner of the land in fee simple; witness does not contemplate that the registered owner, who is the owner in fee simple, should have a power of disposition larger than the estate in fee simple would give him. Under the new system, witness would have a simple Parliamentary form of conveyance, as in the case of Government Stock, not admitting on the face of it any description of trust or incumbrance. With regard to registering estates in fee, witness would make no distinction between fees conditional, or fees arising upon shifting uses; all fees upon the register may be absolute and unaffected by any condition whatever.

Advantage of having a form of conveyance which could be entered in duplicate, and thus afford an easy mode of preventing forgery or fraud. As to the transfer of stock at the Bank of England, a similar form of entering the transfer would be equally good with regard to land, but witness would prefer having a conveyance. Great saving of expense which would result from the proposed system of registration in regard to the transfer of land; the chief expense of conveying land is not from the operation of the conveyance but from the investigation of the title.

The expense of the conveyance would, in the proposed form, be merely nominal. Suggestions that there should be duplicate deeds of conveyance, one to be registered and the other delivered back to the owner. With respect to equitable mortgages, the system proposed by witness would admit of equitable mortgages by a deposit, with the same facility as now exists. It would be better, as affording a manifest sign of ownership, that there should be something in the nature of a certificate of ownership, which should be delivered up previous to the new owner being registered. With regard to caveats, witness would permit anybody to enter a caveat, in the same way that anybody may now lodge a *distringas*, by a person making affidavit that he believes himself interested in the land to which his caveat may apply; sufficiency of the caveat to protect the equitable interest.

As to the advances obtained from bankers on a deposit of title-deeds; the system advocated by witness would admit of mortgages by a deposit, with the same facility as now exists. So far as equitable rights are concerned in land, creditors, as between each other, take in point of time priority, without reference to the right. Under the proposed scheme the registered owner may execute all the conveyances, and create all the modifications of interest which he can, according to the existing law, without

entering upon them the right he has so to do, so as to affect any equitable interest he possesses, but not so as to affect a purchaser purchasing from him. The proposed scheme would not put a stop to the loans of money by bankers upon the deposit of deeds; it could be done as safely under that system as at present.

In the event of a party fraudulently obtaining advances from a banker, on the deposit of title-deeds, and from a person entering a caveat upon the register, witness would give the priority to the party entering the caveat. The duplicate deed of the registered owner should be produced to the registrar before any conveyance should be allowed to be made by the registered owner. The entering of a caveat is merely a security, and does not create any estate. The priority of claim forms no part of the proposed scheme; the equities of the parties would be left exactly where they were. A caveat should be an inhibition merely from transferring the legal ownership. A trustee having the legal estate may sell to the purchaser, for valuable consideration, discharged of all equities in favour of the *cestui que trust*; that trust will have no protection unless there be a caveat.

In the event of a banker advancing money on the deposit of title-deeds, he should be allowed to protect himself by entering a caveat. A well-advised purchaser would require the duplicate deed of ownership to be given up to him, in the same way that at present he would take the title-deeds. It forms no part of the scheme to alter the equitable doctrines. A banker who advances money upon a deposit of deeds, and enters a caveat, should not have a claim upon the property, exclusive of all interest in *cestui que trust*. Manner in which the original title-deeds should be dealt with under the proposed scheme; in whose custody they should remain. Manner in which incorporeal hereditaments should be entered upon the register.

Remarks with respect to titles, and the way in which joint ownerships, or joint tenancy, would be dealt with under the proposed scheme of registration. A purchaser retaining a title upon the register, upon all occasions, gets a title free from any estates created subsequently to the original register, and not subsequent to all estates created previously to the register. Objections to allowing a person to enter his title upon the register, not as absolutely entitled to the fee simple, but subject to certain specified incumbrances, as that would be introducing entirely a new element of recognition of incumbrances not being of the nature of registered ownerships.

Evidence upon the subject of rent-charges; how far the proposed scheme of registration would show the existence of rent-charges on land without reference to the title-deeds. It forms no part of the scheme that the registered title is to represent the only title to an estate, though, doubtless, such would soon become the practice. Registration should be made

compulsory. Land should be made transferable by way of registered ownership in the form suggested, and in no other form. How far there is any objection to the tenant for life in a settlement being one of the trustees of that settlement. Witness would not make any restriction as to the number of persons who should be registered owners.

The appointment of new trustees would not appear on the register any more than they do at the present moment with respect to the title to the estate or the title to stock. Provision should be made for a succession of registered owners appearing on the register. Reference to the proposed new Court of Probate; the suggestion as to appointing the real representative has been made with reference to the establishment of a Court of Probate. The establishment of a real representative would be a very convenient addition to the present scheme. No doubt, some means might be found for vesting in the Court of Probate the right to investigate certain titles; the decision of such a Court should be final as against the right of third parties. Observations as to the power of the heir-at-law to have himself registered as the owner, upon proving to the registrar that he was heir-at-law, by producing his certificate of baptism.

At present probate of a will affecting real estate is not necessary. The registrar should have power, where he had reason to suppose that something wrong was going on, of interposing a temporary check upon the transaction. One great advantage of the proposed mode of registration would be, that there would be a much greater facility of search; objections made to the Middlesex registration, from the difficulty of searching, particularly when the name is a common one. It is not proposed that a registration should be permitted of anything but specified land; it is not at all an essential part of the scheme to define whether the registry should be for the whole lands or for parts.

Such a scheme as the proposed system of registration and transfer would greatly facilitate the period within which the sale of an estate could be completed. The existing system of registration in Ireland, and the evils resulting therefrom, is worse than useless, and one consequence of it is the Incumbered Estates' Court. The proposed scheme of registration would act most advantageously with regard to building societies.

CONSTRUCTION OF STATUTES.

EQUITY JURISDICTION IMPROVEMENT ACT.

FORECLOSURE CLAIM.—PARTIES UNDER S. 42, R. 9.—CESTUIS QUE TRUSTENT UNDER MORTGAGOR'S WILL.

A CLAIM, which came on for hearing before the 15 & 16 Vict. c. 86, came into operation, on behalf of the devisees and executors of a mortgagor against the beneficial devisees of one

moiety, and the devisees in trust (who were also executors) of the other moiety of the equity of redemption under the mortgagor's will, had been ordered to stand over to make the *cestuis que trustent* parties. After the Act came into operation, held by the Lords Justices, that as all the persons having control over the property,—the devisees of one moiety, and the trustees of the other moiety, and the executors of the mortgagor,—were parties, the claim might with propriety be heard without the *cestuis que trustent* being made parties." *Sale v. Kilson*, 3 De G., M'N. & G. 119.

AMENDMENT OF PRINTED BILL UNDER S. 8.—WHERE MORE THAN TWO FOLIOS.

Where the amendments, introduced at one place, in a printed bill, exceed two folios, held that the bill must be reprinted, notwithstanding it had cost 15*l.* in printing. *Turner, L. J.*, said, "Some rule must be adopted, otherwise the Court must in each case examine the length of the amendments, and determine whether they interfered with the legibility of the printed bill. The Court had no authority to make a new rule on the subject." *Stone v. Davies*, 3 De G., M'N. & G. 240.

ENCROACHMENTS ON THE PROFESSION.

To the Editor of the Legal Observer.

SIR,—In former Numbers of your Journal, your Subscribers were doubtless pleased to find your attention directed to the tendency of unqualified persons encroaching upon the legitimate functions of Attorneys and Solicitors.

Your notices hitherto have, however, been confined to the operations of inferior grades, such as agents, accountants, &c. Other enemies are, however, in existence, in the shape of briefless barristers, who, either by reason perhaps of the dearth of practice consequent upon the recent changes in the Law, or of their own want of forensic ability, strive to embrace a mongrel occupation, to the prejudice of the true-bred attorney, by taking the management of estates, including collection of rents, preparation of leases, &c., and not forgetting to make charges in respect of each.

That inferior persons, such as agents, should aspire to the qualifications and profits of their superiors,—or, in other words, that they should attempt to aggrandize themselves at the expense of the Profession,—can excite

but small wonder. That members of the Bar, however, who pride themselves upon their superior position, should descend to competition with Attorneys in matters which properly and exclusively belong to the latter, is to be regretted, as also the supineness of those most interested in the subject.

If the practice is condemnable, it is to be hoped that some active members of the Law Institution, or of the Profession generally, will protest and use their best efforts to contend against these encroachments. Surely the Inns of Court can and will, if appealed to, rectify the evil.

ATTORNATUS.

CHARGE OF THE RECORDER OF HULL.

THE Epiphany Quarter Sessions for this borough were opened before *Samuel Warren, Esq., Q. C.*, Recorder, who charged the Grand Jury as follows:—

"Gentlemen of the Grand Jury,—We meet again, for the sixth time, to discharge our grave and painful duties: duties directed to those unhappy persons who while we—free as the air we breathe—are enjoying the delights of cheerful social intercourse, and welcoming the advent of another year, are incarcerated in a prison, awaiting, in more or less misery, our decision upon the acts imputed to them. These duties we must endeavour to discharge with firmness and discretion, as good citizens dealing with their fellow citizens, by no means the less such, because they stand in peril of being proved to be erring and unworthy ones.

"Gentlemen, since I last sat here, circumstances with which you are familiar have arisen, in my opinion not only justifying but requiring some observations from me on this occasion; for my acts and opinions, as your Recorder, have been suddenly and widely challenged, and those imputed to me which I deliberately disclaim. The administration of justice in this place requires great care and circumspection; a fact impressed upon me by several persons on my appointment. The reason is, that the inhabitants of Hull are characterised by a lively and watchful interest in the administration of justice, and I honour them for being so, frankly avowing that in my opinion the sterner the scrutiny the more salutary for the Judge, and consequently for the Public. The only condition I would impose is, that of candour, and carefully ascertaining facts. I am one of those who, while utterly unmoved by any amount of popular clamour, yet own a cordial allegiance to public opinion—especially to that of a great Christian community. 'There is no better guardian of judicial integrity,' said a celebrated politician lately deceased, 'than public opinion,'—and in that observation I cheerfully concur. I think

it right then, especially as the public mind is at this moment worthily and anxiously addressed to the great subject of crimes and punishment—and especially to that of juvenile delinquency—to explain briefly what are the fixed principles of criminal jurisprudence on which I act, and have hitherto acted, in this Court, with reference to adult, but especially youthful criminals. I am anxious publicly to state them, from this place, that henceforth you and I, at least, should not misunderstand each other. Bear with me then, for a short time, if at a crisis of great public moment, and also under special circumstances entitling me personally, as I think you will believe, to your considerate attention, I avail myself of the opportunity, happily afforded by a light calendar, to exercise the undoubted right of a Judge in addressing a Grand Jury. A nobleman, now of great authority in the state, 20 years ago, when a minister in the House of Commons, and on a painfully interesting occasion, thus vindicated that right:—'It is strictly the duty of a criminal Judge to explain to the Grand Jury that which he conceives to be the origin and cause of those crimes which form the subject-matter of his address.'

"Gentlemen, the root of the whole matter with which we have now to deal lies in the notion of *punishment*; a word representing a visible and ordinary reality, but involving as deep and difficult consideration as can challenge the minds and consciences of Christian men. I find it impossible to detach from punishment the idea of *retribution*; but only in the sense which the great Locke has annexed to that word. 'In the state of nature,' he says, 'one man comes by no absolute or arbitrary power to use a criminal, when he has got him into his hands, according to the passionate heats or boundless extravagancy of his own will; but only to *retribute* to him, as far as calm reason and conscience dictate, what is proportionate to his transgressions.' The retribution, gentlemen, which I mean, is the conviction, brought home to the conscience of the offender by such pain and coercion as are compatible with humanity, that he cannot and shall not break the law of the land with impunity, inasmuch as crime assuredly, when detected, entails punishment. Were it, indeed, to be supposed otherwise, were laws denuded of all that gives them life and force, they would become mere dead letters, and society be speedily crushed beneath the foot of fraud and violence. But here I shall cite another authority, that of the illustrious Sir Matthew Hale—as pure a Christian and as great a Judge as ever dignified the administration of justice in this or any country. 'Regularly,' he says, 'the true, or at least the principal, end of punishment is, to deter men from the breach of laws, so that they may not offend, and so not suffer at all; and the inflicting of punishment in most cases is more for example and to prevent evils, than to punish.' Thus you will see, both these good and great men exclude from the notion of

punishment the element of vindictiveness; and well we Christian men may do so, too, bearing in mind that the actions of mankind are weighed by Him whose eye never slumbereth nor sleepeth, the final and only Judge of mankind; who hath so awfully told us, '*vengeance belongeth unto me, I will recompense saith the Lord.*'

"It may be gathered from what I have said, that the main end of human punishment is the prevention of future crimes; not only by the detected offender but by others who may witness or hear of this detection and punishment, or, as the Roman orator has said, with equal beauty and brevity, *ut metus videlicet ad omnes, pena ad paucos, perveniret.* That is, that the infliction of punishment should fall on few, but the fear of it on all? Thus, in decreeing and awarding punishment, both Legislature and Judge ought to have their eye on two parties—the criminal and the bystander.

"While repudiating the idea of vengeance or vindictiveness, however, let us not forget that we have to deal with one who has actually, and perhaps repeatedly, violated the laws essential for the protection of society; and who stands altogether on a different footing from him who has not done so, but, on the contrary, deserves well of society for the noble constancy with which he has resisted almost irresistible temptation, enduring the keen pangs of want, amidst surrounding plenty. The former we regard with pity, largely tinctured with sternness; the latter with a warm and admiring sympathy. I would lay it down, therefore, not only as imprudent, but a positive wickedness, to inflict the slightest decree of punishment more than suffices to secure the attainment of the salutary ends proposed; and this not only because we, in doing so, exceed the authority delegated to us by the Supreme Lawgiver, but because we may brutalise the offender; we are like to extinguish every spark of compunction that may yet smoulder within him, and unhappily convert a criminal into a victim. Gentlemen, it is the glory of our age, however, that our criminal legislation is becoming yearly actuated by a more humane spirit. It is a vast experiment that we are making on human nature; but still, as I said on taking my seat in this place, mercy and justice must reflect each other's rays, or neither deserves its name. The practical problem is, how so leniently to administer the criminal law, as not to encourage, perhaps I might say even tempt, the commission of crime; for there are brutal natures whom nothing but a rod of iron can subdue and keep in awe,—on whom lenity is thrown away, and is as foolish and mischievous as severity is often cruel and even criminal.

"The Legislature and the country at large are now pondering these considerations with peculiar anxiety. After the great change in our system of secondary punishments, to which I called the attention of the Grand Jury at the last Sessions—the abolition, to a large extent, of transportation—society is being forced, in self-defence, as we all ominously feel, to con-

template and provide against grave contingencies.

"But, gentlemen, there is another aspect of this great question on which the eyes of the nation are fixed as those of one man; and it appears to me, too, with an enlightened philanthropy of spirit, a comprehensive consideration of cause and effect—of tendencies and consequences—which are of the happiest augury for practical movement by the Legislature and individuals. Let me explain my meaning, and at once come to the great and trying question of juvenile delinquency, by supposing a case with which, for aught you at present know, you and I may have to deal at these very Sessions. Suppose a youth should come before us with some eight, ten, or twelve previous convictions for felony, and other offences, as it were suspended from his neck in miserable profusion. Should such an one stand at that bar, and be found guilty, what, as matters at present stand, is to be done with him? Am I to render the administration of justice ridiculous, that bar contemptible, and ourselves laughing-stocks, by passing a light sentence, quickly insuring his return to us again and again, worse and worse? Are we not rather from the past to judge the future? and that if we go on as we have begun, in weak dalliance with duty, so will he only be serving a longer apprenticeship to crime! The question was asked of the awful Author of our faith,—'How often shall my brother sin against me and I forgive him? Till seven times?' And the sublime answer was,—'I say not unto thee until seven times, but until seventy times seven!' But he whose heart is even most thoroughly suffused with this spirit, and who would freely forgive a personal injury as often as it is inflicted, stands clothed with a sacred trust, when charged with the protection of society, by vindicating the authority of its laws; and is called upon faithfully to discharge a different class of duties,—to 'be just and fear not!' But I will tell you how the noble spirit of which I spoke would influence such an one: it would make him see in the offender before him, through the thick black haze of guilt, one to be reclaimed; feeling that to treat him as irremediable is to make him such; and, in so doing, entail on those doing so, a fearful amount of guilt in the eyes of Him whose mercies we ourselves would fain experience every moment of our lives. Such an one as I speak of would not expend the force of his convictions on sentimental expressions or desultory efforts, but on actions regulated by untiring patience and prudence. He would look, with true Samaritan eye, on every youthful delinquent as a *firebrand to be* 'plucked out of the burning;' and for that purpose would not be too nice or fearful in approaching the flame. He would say,—I regard your acts as evidence of a vicious habit of mind; and a very little of this reflection would startle him by suggesting the question, 'How was that habit first acquired?' And by and by he would feel the humbling conviction that to a large extent he himself, as

a member of the community, was responsible for the guilt before him, and would say, with some of old, 'We are verily guilty concerning our brother!' And so, indeed, in these times, the voice of God is loudly telling us we are; and if we neglect that voice, let us well beware! The consequences may be equally serious, individually and nationally. Gentlemen, let us not deceive ourselves, but each ask himself what have I done, *individually*, to abate this crying and alarming evil of juvenile delinquency? To arrest this cancerous taint, fast eating its way to the very vitals of the community?

"Gentlemen, let us ask ourselves what is the difference, in the eye of God, between us—all of us guilty before him—and the poor wretch who may presently stand at that bar? One glaring difference is this. We have had virtuous and watchful parents training us from childhood by precept, and by example; all our wants cared for, and our eyes fixed only on the sunny side of life, the lines having fallen to us in pleasant places. But here is one who has sucked in guilt and misery with his mother's milk! Has seen only starvation, drunkenness, and brutality around him! He has been positively coerced into crime! Poor soul, when he would have done good, evil has been present with him. No man hath cared for his soul; and the selfish world has looked on in complacency while this poor creature was being hurried along from the cradle to the gallows, or if that world has interfered at all, it has been only to punish that which itself had caused!

"Gentlemen, what can I do? I sit here as a Judge, to administer the law of the land; and it is in my power to imprison such an one for a lengthened period; to inflict hard labour, and personal chastisement; or to condemn to many years of penal servitude. Do you suppose it is agreeable to me to do this? And when I have so discharged my sad duty, I ask you, are you, yourselves, as Christian men, in your conscience satisfied, and tranquilly content that 'the law should take its course?' What course—when dismissed from the gaol, possibly with a soured spirit, or let it be hoped with the germ of bitter feelings in his heart, what becomes of him? No fond parent or kind friend is waiting outside its walls for the little outcast, to nourish the faintly repentant spirit; no one cries 'God bless him!' and in desperation he returns to his old haunts, companions, and crimes. What is this but to thrust a patient, just recovering from a deadly disease, again into the fatal focus of contagion?

"Gentlemen, would any one of us deal thus with a son of our own? And if we would not, where is our excuse before Him who says, 'It is not the will of your Father which is in Heaven, that one of these little ones should perish?'

"Gentlemen, the experienced physician who sits beside me, in the person of your honoured mayor, would tell you of two great doctrines of his healing art; that a constitutional malady

requires constitutional treatment; but above all, that prevention is better than cure. And these two doctrines hold equally good of the administration of the Criminal Law. We have two great objects: we wish to cure the moral disease, to reclaim the criminal. But we would fain, also, have no disease at all—no criminal to reclaim! I for my part, should wish to see my business in this Court diminishing, session by session; and, if you choose, that in my civil Court increase instead. I wish to diminish you gaol expenses, and supersede, as much as possible, your costly machinery for detecting, punishing, and perhaps, after all, only propagating crime.

"The question narrows itself thus practically. What shall we do, when the young criminal quits the prison? How shall we prevent his getting there? Gentlemen, as to the former, I have not the least hesitation in thus publicly declaring, and that in the most ardent and solemn language at my command, and as the result of all my own observation and experience, and communication with some of the best men of the age, that we must have, and that without delay, reformatory institutions, of some sort or other, or be held accessories before or after the fact, to the destruction of great masses of the rising generation. Coming events cast their shadows before; and we may discern great times approaching, in which the consideration of this very question will prove of such momentous consequence, that to postpone, or trifle with it, will prove to have been a sort of national suicide, or the consequences of a judicial blindness. There are undoubtedly serious practical difficulties environing the subject; but what great exigency requiring to be dealt with ever was without them? And these difficulties I believe to be, though great, by no means insurmountable. Their existence should serve only as a stimulus to commensurate exertion, if we be really sincere and in earnest. I protest, for my own part, that I never saw so many, such various, and overpowering motives concurring to prompt, systematic, wise and generous exertions, as combine to urge on us the establishment of reformatory institutions for the criminal youth of this country. Our posterity will be ashamed of us if, with this monster evil searing our eyes, and crying out aloud in our ears, we fail to attempt a remedy for it: if this signal opportunity be indolently and wickedly neglected. And we, too, thinking and calling ourselves, the while, a great people!

"But, gentlemen, it may be far and gloriously otherwise. The next generation of children may exhibit the results of a wise, generous, pious policy, worthy of a Christian age and people; and those who shall come after us will be proud of being our descendants. Foreign nations may hereafter say, here was a truly great people who, at the very moment when the blood-red haze of war, perhaps of extermination, was enshrouding themselves in Europe, yet calmly and grandly obeyed the voice of conscience and the dictates of duty, setting their

inner house in order, reclaiming the guilty of its population, and shielding the unprotected—becoming a very father to the fatherless! They will tenderly echo the invocation of the Roman poet—

“*Di majorum umbris, tenuem et sine pondere terram
Spirantesque crocos, et in urna prepetuum ver,
Qui preceptorum sancti voluere parentis,
Esse loco.*”

“But, gentlemen, in so great an undertaking why should we show a want of fitting vigour and system? Why not at once attack the enemy in front, in flank, and rear—and also cut off his reserves, and reinforcements? I repeat it, *prevention* is infinitely better than *cure*; and that prevention is to be successfully sought only in religious education. This is the mighty lever to which every one of us can put his hand, with what vigour he may, and, with the approving eye of God upon him. Why do we so anxiously and with such effort and sacrifice educate our own children? For the very reason why we ought to *assist*—I say very advisedly, *assist* the poor in educating theirs! Do not mischievously supersede their own efforts, but tell them to put their own shoulders to the wheel, and then aid them vigilantly and discreetly. Why should we not all, individually, for instance, in our respective spheres of action, pledge ourselves to give a preference, in *employment*, to those children who have longest well conducted themselves in such institutions as I am speaking of?

“Let the State, if you will, exert its splendid energies in the cause of education; and where we find it encountering difficulties which are too much for it, then let us come forward, each in our respective sphere, and assist it by our private exertions. Let every denomination of Christians be at its post, contending with the common enemy, ignorance and vice, and then shall the blessing of him that was ready to perish, come upon all. As far as may be, let compulsory and voluntary public and private education go hand in hand; nobly rivalling each other in imparting moral and religious instruction.

“Gentlemen,—So deeply do I feel these things, that I assure you I would rather—fixing my eyes on my death-bed, and anticipating the reflections of that awful moment—be the founder of a ragged-school, a Sunday-school, a school of any sort or description which taught the heart its duties to God and man; I would rather, I say, then reflect on such an act, than strive to cheat my departing spirit with dreams of a glittering chaplet of earthly immortality, in respect of anything for which short-sighted human vanity or ambition might pant; and I believe there are many good men now living—who that I were among them—who, for what they have done in this direction ‘shall shine as the stars for ever and ever.’

“Gentlemen, I have now tried to explain the views on which I act, with circumspect anxiety, in awarding punishment, from this seat of justice; each particular case standing on its own merits, as disclosed at the time, to him charged

with the serious responsibility of dealing with it, and possessing the best means of information concerning it. No one in this Court feels more acutely than I do for those with whom it is my stern duty to deal most severely; and with reference to juvenile offenders, I sometimes think, as I look at them from this chair, would that your profligate and abandoned parents stood in your place! And let us hope that the Legislature may presently find some means of dealing with them, directly and effectively, ‘so laying the axe at the root of the tree.’

“These, gentlemen, are my real sentiments, my deep-seated convictions. They are not opinions hastily adopted for a paltry purpose, but results of many a long year of anxious consideration, which has taught me the equal danger of precipitancy and procrastination in this matter. If anything that has fallen from me on this occasion shall be attended with the smallest good effect in any quarter, by way of warning, encouragement, or mere suggestion, I shall not regret the somewhat hard necessity which has made me thus speak out. Gentlemen, my conduct in this seat, my acts and motives, have been entirely misapprehended, and consequently misrepresented—and that far and wide. God forbid that I should say intentionally, but precipitately. It may not signify much, perhaps, to any who hear me, but my feelings have been pained, not a little, by the way in which I have seen myself spoken of—compelled myself to be silent—in different parts of the kingdom, by those who were entirely mistaken as to facts. But believe me, gentlemen, my heart is a stranger to resentment, and I know how to put a liberal construction on the motives and intentions of those who, I think, have dealt rather hardly with mine. If I can do nothing more in this seat, I will at least try to show obedience to the Divine precept—‘Let your moderation be known unto all men.’ O gentlemen, let not us worms be too anxious about the opinions of our fellow-worms; but all of us seek the guidance of an enlightened conscience, in the discharge of whatsoever duties we have cast upon us.

“As for myself, let me congratulate you on the lightness of our calendar, and the diminished number of criminals in our gaol: in no small degree attributable to the fact that punishment is found here to be a reality. But it is much more attributable to the truly admirable discipline in the gaol, for which you are indebted to the zeal and discretion of the humane governor, and the teaching of the pious and indefatigable chaplain. I myself have taken pains to become personally acquainted with these matters, and know thoroughly the economy of the gaol. I never saw more made of their opportunity by responsible officials. Gentlemen, the true interests of humanity always suffer from a spurious sentimentality; and I, for one, never can sanction anything tending to make a criminal for one moment forget that he is such—obliterate the distinction between the honest man and the rogue.

A gaol, gentlemen, must be a gaol; and made so uncomfortable as to be repulsive: it ought to be shunned, and with good cause.

"But let me end with saying, that if a wise and generous Legislature could but convert the portal of a prison into the entrance to a reformatory asylum, it would, in the case of the unhappy youthful criminal, be really a passing from moral death into life.

"Gentlemen, if you, as representing a large, important, and enlightened section of the community, entertain these opinions, seize the favourable opportunity of saying as much, and in so doing reflect honour upon Hull!

"Gentlemen, I have now done; I have no remarks to make upon the state of the calendar, because there are but few cases in it, and that is the vindication of our proceedings. Judging from the experience of six sessions, therefore, I feel I should be intruding on your time by offering any general observations. There is but one case upon which I would offer a single remark, and that is where the prosecutrix may be prevented from appearing before you, instead of which her deposition may, possibly, be submitted to you. Gentlemen, by a late Statute, it is competent for the prosecution to put in a deposition as evidence. If the person who made the deposition is dead, or too ill to attend here, the deposition may be received in evidence, if it be proved that the accused party has had the opportunity of cross-examining the deponent. A late statute has stated such evidence may also be taken by the Grand Jury. Gentlemen, I dismiss you with one word more. All crime originates in intemperance or ignorance. These are the two causes with which we have to deal."

The Grand Jury afterwards returned with several bills, and presented the following resolution to which they had unanimously subscribed:—

'To Samuel Warren, Esq., Q.C., D.C.L., F.R.S., and Recorder of the Borough of Hull.

"Sir,—The Grand Jury, having heard this day with pleasure and admiration the remarks addressed by you on the subject of secondary punishments, as connected with reformatory institutions for juvenile criminals, are fully impressed with the great importance of the subject, and will have pleasure in using their best endeavours to forward such an object; satisfied from facts, and information diffused through the bench, press, and other sources, that it is the imperative duty of every individual, and all associated bodies, to do all in their power for the purpose of securing a full and efficient trial of the principle of prevention of crime, as distinguished from what has been too long in operation—that of its punishment.

"I have pleasure in subscribing myself, on behalf of the Grand Jury, yours most respectfully,

ROBERT HARRISON, *Chairman*.

"Grand Jury Room, Town Hall, Hull, Jan. 5."

PROCEEDINGS OF LAW SOCIETIES.

To the Editor of the *Legal Observer*.

CERTIFICATE DUTY.—LAW TIMES.

SIR,—Very objectionable and even offensive observations frequently appear in the *Law Times* regarding the measures adopted for repealing the Annual Certificate Duty and other subjects solely affecting the Attorneys and Solicitors. The editor (who I understand is a Barrister) assumes a patronising air which I have never observed in any of the eminent members of the Bar, and this in matters peculiarly affecting the personal interests of Attorneys. It seems we are unable, without his aid, to form an opinion of the extent to which the education of Attorneys should be carried, or the proper mode of proceeding to redress any of our grievances, whether fiscal or otherwise!

I have a great respect for the talent and knowledge displayed by many public writers on political and other topics affecting the community at large, and their "leading articles" are of the greatest importance. So, on matters of Law Reform which affect the Public and the whole Profession, the comments of able journalists are deserving of every mark of attention and respect. But surely the general body of Attorneys and Solicitors are competent to manage their own affairs, and to elect their own committees and agents, without the arrogant dictation of self-constituted patrons. The several Law Societies in town and country, with their committees, consisting of men of great experience and ability, are the proper representatives of their brethren. They are, I believe, in communication with each other, and I must say that it is not a little presumptuous in a member of the other branch of the Profession to censure the course of proceeding adopted by the Incorporated Law Society, acting in conjunction with upwards of 40 Law Societies throughout Great Britain and Ireland.

Burdened with the tax in question, I should be grateful for the support of the press in seeking its repeal, but it is really mischievous to throw discredit on the exertions already used, and calculated to disunite a body which, in order to succeed, must pull together.

A LONDON ATTORNEY.

SELECTION FROM CORRESPONDENCE.

FREE-FARM RENTS.

I SHALL be obliged if some of your Correspondents will inform me where conveyances of free-farm rents are enrolled or registered, and by what Statute, and whether two offices claim the honour. A hundred years ago, a conveyance of those rents was enrolled in the Tower.

W.

APPLICATIONS FOR TAKING OUT AN
RENEWAL OF CERTIFICATES.*On the 1st day of February, 1854.*

Allen, Geo., 27, John St. Southwark; Marshall St.; Waterloo Road
 Archer, James, 9, Spencer St., Goswell Rd.
 Ash, John Geo. Hele, 35, Adelaide Road, Hampstead; Canada
 Berrey, Percival, Liverpool; Halifax; Auckland, New Zealand
 Bolton, J., 1, Princess St.; Peterboro' Vils., King's Road; New North Street
 Bolton, George Bolton, 25, Peter's St., Islington; Nichol's Sq.; Northumberland St.
 Booth, Joseph Wilkinson, Rochdale
 Bottrill, George, Lutterworth
 Bowden, James, Langhorne
 Burchell, Jas., 21, Red Lion Sq., Gordon Sq.
 Byers, James Broff, Pembroke
 Capron, Jn. Rand, Guildford; Chancery Lane
 Clarke, Thomas, Leicester
 Cooper, Rt., jun., Cheltenham; Gloucester
 Findon, Frs., Barton-on-the-Heath; Shipston-on-Stour
 Foot, Chas. Chalmers, 4, Herbert Pl., Strand
 Gabriel, Wm. Wallace, 44, Lincoln's Inn Fields
 Giles, Hy. Edw. Broissant, Hanley; Dunkirk; Edenbridge
 Grant, Alexr. Lorent, 8, Eton Villas, Hampstead
 Griffiths, Henry, Wendover; Burcott
 Goodger, John Swainston, Gainford
 Gross, Benjamin Lilliston, Ipswich
 Hardy, Edward Webb, Charles St., Notting Hill; West Wickham
 Holmes, G. Penfold, 15, Great James St.; Cirencester; Arundel
 Hooper, Briscoe, Bristol
 Hutton, John Reuben, Bishop Wearmouth
 King, Charles Stafford, 15, Serjeant's Inn
 King, Wm. Hy. (Judge's Order), Blackheath; Upper Gloucester St.; Fullerton
 Lawrance, John Busley, 10, Cowley Place, Peckham
 Makin, Thos., jun., Wharton; Lancaster
 Mee, Thos. 2, Sidmouth Street, St. Pancras
 Newstead, Henry James, Otley
 Nunn, Sturley, jun., Ixworth.
 Okey, Thomas King, Bristol
 Olive, Joseph, 4, Twyford Bdgs., Lincoln's Inn Fields
 Ord, Charles Ovington, Gainsborough
 Pemberton, Stephen John, Newcastle-upon-Tyne; Hexham
 Pocock, Geo., Shirley Warren, near Southampton
 Richardson, H. F., Albert Terr., Bayswater; Westbourne Park Place
 Robinson, Hen. Meggison, 14, Victoria Pl., Clifton; Bristol
 Rogers, Arnold Crane, 34, Lime St., City; Hanover Square
 Simpson, Thomas Fox, Tunbridge Wells
 Smith, Wm., Langford; Weston-super-Mare
 Sutton, Ellis Price, Lake; Sandown, Isle of Wight

Vassall, Robert Lowe Grant, Yeovil; Bristol
 Vickers, Thomas Thwaites, Newport
 Violet, E. William, 4, Tillotson Place, near Waterloo Bridge; Banwell
 Upton, G., 2, Hope Cottages, Camberwell;
 Birkenhead; Liverpool
 Waldron, Francis, 7, Upper Penton Street, Pentonville
 Walthew, Frederick Jas., 13, Oxford Terr., Edgware Road
 Williams, Edward (Judge's Order), Swansea; Talgarth
 Yearaley, Stephen, Cheltenham.

NOTES OF THE WEEK.

STATE OF THE IRISH BAR.

JUST five years since the number of annual calls to the Bar was 25, since which it has been gradually decreasing until it has sunk to the low figure of two. In 1847, the number of new law students was 40; in Trinity Term, 1853, there was but a solitary claimant for admission. In the second branch of the Profession the decline is nearly equally striking, but the case of the attorney is not yet so bad as that of their brethren of the horsehair. Meanwhile this fearful falling away—this extension of the "clearance system" to the Hall of the Four Courts—must of necessity make a serious difference in the amount of revenues heretofore received by the Benchers of the Queen's Inns. The income of this influential body is almost wholly derivable from the fees paid by law students and attorneys' apprentices, and the moneys thus received have been disbursed with no niggard hand in buildings and other improvements; the payments in this way during the last 20 years being estimated at little short of 70,000*l*. Their responsibilities, including the rent of all the Law Courts, are very heavy; and, unless fickle Fortune turn up something like a counter "social revolution," there is no knowing what the *finale* may be.

COLONIAL LAW APPOINTMENTS.

Edward M'Dowell, Esq., has been appointed Crown Solicitor and Clerk of the Peace, Van Diemen's Land, and Francis Smith, Esq., Solicitor-General, Van Diemen's Land.

SCOTCH LAW APPOINTMENT.

The Queen has been pleased to appoint Alexander Currie, Esq., Advocate, to be Sheriff of the Shire or Sheriffdom of Forfar, in the room of James L'Amy, Esq., resigned.—From the *London Gazette* of 17th Jan.

NEW MEMBER OF PARLIAMENT.

Sir Michael Hicks Hicks Beach, Bart., for East Gloucestershire, in the room of Henry Charles Fitz Roy Somerset, commonly called Marquis of Worcester, now Duke of Beaufort, summoned to the House of Lords.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

(Coram Lord Chancellor and Lord Justice Turner.)

In re Booth. Jan. 13, 1854.

LUNATIC. — ALLOWANCE TO FATHER FOR PAST MAINTENANCE.

Held, on petition confirming the Master's report finding that nothing was due to the estate of the deceased father of a lunatic in respect of maintenance previous to an order for payment out of the annual proceeds of a legacy of a sum for maintenance, that, unless under special circumstances, a father could not be allowed anything for past maintenance of an infant lunatic.

It appeared that this lunatic, who was declared of unsound mind in 1813, had resided with his father, and that in March, 1838, an order was made for payment of 500*l.* a year out of the annual proceeds of a legacy devised to him by his mother, who died in January, 1837, for his maintenance. No order as to past maintenance was made, and in 1840 an application was made for the allowance of the same from January, 1837, to March, 1838, upon which a reference was directed to the Master at the father's expense. The reference was not proceeded with until after the father's death, in 1849, but on his executors prosecuting the inquiry, the report found that nothing was due to the father's estate. This petition was now presented by the lunatic's brother and committee to confirm this report.

Malins and *Skebbeare* in support; *Bacon* and *Hardy*, for the executors, contra; *Kenyon* for the next of kin.

The Court said, that there was nothing in the present case to take it out of the general rule that a father could not be allowed for the past maintenance of an infant lunatic after an order for an allowance out of the lunatic's estate, and the petition confirming the report would therefore be granted, with costs.

Tandyn v. Richards. Jan. 13, 1854.

PLAINTIFF SUING IN FORMA PAUPERIS. — PLEADING CAUSE IN PERSON. — PRACTICE.

Held, that a plaintiff suing in forma pauperis is not entitled to plead his own cause, but that he must apply to the Registrar for counsel and attorney to be assigned in the usual manner.

This was an application, by the plaintiff, who sued in forma pauperis, for leave to plead his own cause.

The Court said, that the application must be refused, as he might have counsel and solicitor assigned to him on application to the Registrar.

(Coram the Lord Chancellor and Lords Justices.)

Hicks v. Sallitt. Nov. 21, 22; Dec. 5, 6, 12, 1853; Jan. 14, 1854:

SALE OF ALLOTTED LAND OF MANOR BY

TRUSTEES. — UNDER TRUST FOR PAYMENT OF DEBTS. — SETTING ASIDE. — ACCOUNT OF RENT AND PROFITS.

By a marriage settlement, the manor of W. was conveyed, on the determination of certain trusts, to such uses as the wife might appoint, and under an Inclosure Act a portion of land was allotted to the trustee as lord of the manor, and he afterwards purchased the portions allotted to the other owners and formed the whole into the N. farm, which was let on lease. The wife, by her will, gave all her lordship or manor of W., together with all courts leet and courts baron, fines, quit rents, and profits of courts, and all other the rights, members, privileges, advantages, and appurtenances, belonging or appertaining thereto, to the plaintiff's father for life, with remainder to the plaintiff in tail. She gave the residue of her estate in trust for sale for payment of debts, and the trustees accordingly sold the N. farm to the defendant: Held, on appeal from Vice-Chancellor Wood, that such sale was unauthorised and must be set aside, and the defendant account for all the rents and profits for the whole period of possession.

This was an appeal from the decision of Vice-Chancellor Wood. It appeared that on the marriage of Mrs. Barker, in 1796, the manor of Watton, Norfolk, was conveyed, on the determination of certain trusts, to such uses as she might appoint, and that in 1803 a portion of land was allotted to the trustee of the settlement as lord of the manor, under an Inclosure Act, and that he had afterwards purchased the portions allotted under the act to the other owners of lands, and the whole were formed into the Neaton farm, which was let on lease for 13 years. In 1807, Mrs. Barker, by her will, gave all her manor or lordship of Watton Hall, together with all courts leet, courts baron, fines, quit-rents, and profits of courts, and all other the rights, members, privileges, advantages, and appurtenances belonging or appertaining to the manor or lordship, to Mr. Hicks, the plaintiff's father, for life, with remainder to the plaintiff in tail. The testatrix died in 1813, and the trustees in 1814 sold the Neaton farm under a trust for the sale of the residue of the estate for payment of debts. The plaintiff attained his age of 21 in 1849, and now claimed as devisee in tail of the Neaton farm as against the purchaser. The Vice-Chancellor having decreed for the plaintiff, this appeal was presented.

The Solicitor-General, Rolt, and Selwyn for the plaintiff; Wigram and Toller, for the defendant, cited *Dormer v. Fortescue*, 3 Atk. 124; *Pettitward v. Prescott*, 7 Ves. 541; *Pickett v. Loggon*, 14 Ves. 215; *Bowes v. East London Waterworks' Company*, 3 Madd. 375; *Edwards v. Morgan*, M'Clelland, 554; *Attorney-General v. Mayor of Exeter*, 2 Russ.

362; *Clarke v. Yonge*, 5 Beav. 523; *Drummond v. Duke of St. Albans*, 5 Ves. 433.

The Court said, that by the demise in the will of the manor, all the demesne lands then included in or afterwards incorporated with it, passed, and that therefore the land sold in 1814 was also included, and had been improperly sold by the trustees of the residue. As to the question of whether the defendant was bound to account for the rents during the whole period from 1814, as decreed by the Vice-Chancellor, the matter had been directed to stand over for an arrangement if possible, but as the parties could come to no agreement, there must be an order that the defendant should account for the rents and profits for the whole period of his possession.

Lord Chancellor.

Hart v. Talk. Dec. 22, 1853.

DEATH OF DEFENDANT AFTER DECREE.—STATEMENT FILED UNDER ORDER 44 OF AUGUST, 1852. — SUPPLEMENTAL ORDER UNDER EQUITY JURISDICTION IMPROVEMENT ACT, s. 52.

The defendant died after decree in a suit, and a statement was filed pursuant to the 44th Order of August, 1852: Held, that the common supplemental order would be made as of course under the 15 & 16 Vict. c. 86, s. 52.

THIS was an application for the direction of the Court in this suit, in which a decree had been obtained, upon the defendant's subsequent death. It appeared that a statement had been filed pursuant to the 44th Order of 7th August, 1852, which directs, that "if the plaintiff in any cause, which is not in such a state as to allow of an amendment being made in the bill, shall desire to state or put in issue any facts or circumstances which may have occurred after the institution of the suit, he may state the same, and put the same in issue by filing in the Record and Writ Clerks' Office a statement, either written or printed, to be annexed to the bill; and such proceedings by way of answer, evidence, and otherwise, are to be had and taken upon the statement so filed, as if the same were embodied in a supplemental bill."

Moxon, in support, referred to the 15 & 16 Vict. c. 86, s. 52, which enacts, that "upon any suit in the said Court becoming abated by death, marriage, or otherwise, or defective by reason of some change or transmission of interest or liability, it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to obtain the usual order to revive such suit, or the usual or necessary decree or order to carry on the proceedings; but an order to the effect of the usual order to revive, or of the usual supplemental decree, may be obtained as of course upon an allegation of the abatement of such suit, or of the same having become defective, and of the change or transmission of interest or liability."

The Lord Chancellor said, that the common supplemental decree would be made as of course.

Lords Justices.

Coles v. Sims and another. Jan. 16, 1854.

VENDOR AND PURCHASER.—COVENANT NOT TO BUILD IN FRONT OF LAND.—LIQUIDATED DAMAGES.—INJUNCTION AD INTERIM.

On a contract for sale of land, the vendor covenanted that a portion in front of a plot reserved by him should not be built on, but should be laid out as a garden, and that any building thereon should be erected in a line with the houses on the other lots, according to a specified plan. He afterwards sold such reserved lot, which subsequently passed to the defendants, under similar covenants: Held, confirming the decision of Vice-Chancellor Wood, that the plaintiff, who took under one of such purchasers, was entitled to an injunction to restrain the defendants from building, contrary to the covenant—without deciding on the effect of a clause, not before the Vice-Chancellor, for payment of a sum as liquidated damages for breach of covenant.

THIS was an appeal from the decision of Vice-Chancellor Wood, (reported 1 Kay, 56). It appeared that on a sale in 1823, of certain land at Cheltenham for building purposes, it was covenanted that the purchasers should, within a limited time, erect dwelling-houses on their respective lots, in a uniform row and in a position as specified in a plan, and that no building should be erected on the portion of ground in front of each lot, but that it should be laid out as a garden, and that the vendor should dispose of the other lots on similar restrictions, and should, in case he built on the part reserved by him, build in a line with the other houses and keep a similar piece of land in front. The vendor afterwards, but before the other conveyances were completed, conveyed the land so reserved to Mr. Thomas Jones, who entered into similar covenants as to building uniformly and keeping the piece in front as a garden—the vendor covenanting that the other purchasers should enter into similar covenants with Mr. T. Jones. One of the lots was now vested in the plaintiff, who had obtained an injunction to restrain the defendants, in whom Mr. Jones' portion had become vested, from building contrary to the above covenant, whereupon this appeal was presented.

Bacon and Elderton in support; *Roll and Faber*, contra.

The Lords Justices said, that as the case had not come to a hearing, and this was an interlocutory application, it was unnecessary to decide the question, which arose on the clause in the instrument, and which was not disclosed in the Court below, whether the defendant might not build as proposed, on paying a sum of 100*l.* by way of liquidated damages. The plaintiff, who stood in the position of the original pur-

chaser, had shown a *prima facie* case against the defendants, who were in the stead of the original vendor, and a bill could be maintained to enforce the due performance of such covenant, according to *Tulk v. Moxhay*, 11 Beav. 571; 2 Phill. 774; and the decision of the Vice-Chancellor would be confirmed—the costs to be costs in the cause.

Master of the Rolls.

Este v. Smythe and others. Jan. 13, 1854.

MARRIAGE SETTLEMENT.—SUBSEQUENT SEPARATION.—POWER TO WIFE OF DISPOSITION BY FRENCH LAW.

On a marriage of two English subjects in France according to the English form, a settlement was drawn up and executed before notaries public in the French form, whereby a sum belonging to the wife and charged on English estates, was settled on her in accordance with the rule of French law and the custom of Paris. A separation took place, and according to the French law the wife had a right to dispose of her interest by will, which she accordingly exercised in favour of the plaintiff, her son: Held, that the appointment was valid, although the settlement contained no power to appoint to enable her to do so according to English law.

On the marriage of Dr. Este and Miss Smythe, in 1803, at the British Embassy, Paris, a settlement was drawn up and executed before notaries public in accordance with the French form, whereby a sum of 7,000*l.*, belonging to Miss Smythe and charged on real estate in this country, was settled on her in accordance with the rule of French law and the custom of Paris. It appeared that a separation soon afterwards took place, and the wife died in 1850, appointing, by her will, dated in January, 1845, the plaintiff, her son, her executor and devisee, and this suit was thereupon instituted for payment of the 7,000*l.*

Roupell and Beavan for the plaintiff; *Lloyd, R. Palmer*, and *Boyle* for the defendant; *Cotton, Sargent*, and *Pearson* for other parties.

The Master of the Rolls said, that as the settlement was to be determined in accordance with the law of France and the custom of Paris, under which she would be entitled to dispose of her interest by will upon the separation, although there was no power conferred by the marriage articles, the husband was excluded from claiming under his marital right, and the plaintiff was entitled to recover.

Vice-Chancellor Kindersley.

Rice v. Rice. Nov. 16, 1853; Jan. 12, 1854.

VENDOR AND PURCHASER.—PRIORITY FOR UNPAID PURCHASE-MONEY.—EQUITABLE MORTGAGEE.

On a sale, the plaintiffs, the vendors, executed a deed of conveyance to the defendant and signed a receipt thereon, for the whole of the consideration, although a part was not

paid. The defendant afterwards deposited the conveyance, together with the other title-deeds with E., to secure an advance: Held, that the plaintiffs had, by their conduct, lost their priority over E. in respect of the unpaid purchase-money.

It appeared that the plaintiffs, the owners of real estate, had, in October, 1852, sold the same to the defendant Rice, and executed a conveyance, but a portion of the purchase-money remained unpaid. The defendant afterwards deposited the conveyance, together with the title-deeds, with the defendant, Mr. Eade, to secure an advance, and the question arose, whether the plaintiffs or Mr. Eade were entitled in priority.

E. Smith for the plaintiffs; *Elmsley* and *J. V. Prior* for the defendants.

The Vice-Chancellor said, that the rule was, that priority of possession prevailed where the equities were equal, and in the present case as the mortgagee was in possession of the deeds, he was entitled in priority to the plaintiffs' claim for the unpaid purchase money due from their purchaser and mortgagor, and besides they had precluded themselves by executing an absolute conveyance to the defendant and signing a receipt thereon for the whole amount of consideration, and the defendant, Mr. Eade, was therefore entitled in priority.

Wordsworth v. Barrow. Jan. 14, 1854.

WILL.—REPORT OF MASTER AS TO ALLOWANCE UNDER.—ADJOURNMENT OF EXECUTION TO CHAMBERS FOR FURTHER EVIDENCE.

A testator, by her will, directed an allowance to be made to her niece for rent of apartments and hire of a carriage, when she visited London, and the Master had, on a reference, reported as to the amount of such allowance: on an exception being taken to its amount by the residuary legatee, the matter was adjourned to Chambers, in order to adduce additional evidence as to the propriety of the allowance by the Master.

This was an exception to the Master's report as to the annual allowance to be made to the niece of the testator, Lady E. Tufton, in accordance with her will, for rent of apartments and hire of a carriage, when she visited London.

Craig and Jones Bateman for the residuary legatee in support, on the ground the payments were not intended to be more than the testatrix had herself paid during her lifetime to her niece.

Horne for the niece, contra; *Glassey* and *Renshaw* for other parties.

The Vice-Chancellor said, that the case must be adjourned to Chambers, in order to adduce additional evidence as to the propriety of the allowance by the Master.

Wright v. Pell. Jan. 16, 1854.

HEARING ON FURTHER DIRECTIONS.—DECLARATION OF PLAINTIFF'S LIABILITY ON, WHERE DECREE SILENT.

Where the decree in a suit for an account on the dissolution of a partnership was silent as to the defendant's claim, that the plaintiff was liable to make good certain debts which were lost through his misconduct, a declaration of such liability was refused on the hearing upon further directions.

THIS was an application, on this suit, for an account on the dissolution of a partnership, coming on for further directions, for a declaration that the plaintiff was liable to make good certain debts which were lost in consequence of his misconduct.

Terrill in support; *Bacon and Cole*, for the plaintiff, contra.

The *Vice-Chancellor* said, that as no mention was introduced into the decree, made on the hearing, of the plaintiff's liability to the outstanding debts, the claim could not now be set up on further directions, and the application must therefore be refused.

Weston v. Bird. Jan. 16, 1854.

CLAIM.—SPECIFIC PERFORMANCE OF CONTRACT.—ERROR IN PLAN SHOWN ON SALE BY AUCTION.—COSTS.

On a contract for the purchase of land endorsed on the particulars and conditions of sale, it appeared that the plan shown on the sale by auction, was calculated to mislead the defendant into the belief that a strip in front formed part of the property sold, but which was in fact a portion of the common: Held, that specific performance could not be enforced, but the claim was dismissed without costs, as the defendant had shown want of caution.

THIS was a claim for the specific performance of an agreement, which was dated in June, 1853, and indorsed on the particulars and conditions of sale of certain freehold property at Stepney, pursuant to such conditions of sale. It appeared from the plan shown on the sale by auction, that the slip of land in front formed part of the property agreed to be sold, but it was not referred to in the particulars, and in fact was part of the common, and the defendant accordingly claimed compensation in respect of this piece of land.

Daniel and Cairns in support; *Greene*, contra.

The *Vice-Chancellor* said, that as the plan had possibly misled the defendant, specific performance could not be enforced, but as the defendant should have exercised more caution the claim would be dismissed without costs.

Vice-Chancellor Stuart.

Hunter v. Grainger. Jan. 12, 1854.

SPECIFIC PERFORMANCE OF CONTRACT OF LEASE OF MINE HELD BY TENANTS IN COMMON.—AUTHORITY TO ACT AS JOINT AGENT.

A tenant in common of a colliery had appointed her co-tenant as her agent gene-

rally to manage the mine, and he had appointed E. to let the same. E. had accordingly agreed to grant a lease to the plaintiff, but had described himself as agent for the former only. A demurrer for want of equity by the latter was overruled, and held that the defendant was entitled to a specific performance.

THIS was a bill for the specific performance of an agreement for the lease of a colliery, which was held by the defendant and Mr. Green as tenants in common. It appeared that the defendant had appointed her co-tenant as her agent generally to manage the mine, and that he had appointed Mr. Elliott to let it, and an agreement for a lease was entered into with the plaintiff by the latter, who, however, described himself as agent for the defendant, Mrs. Grainger.

Melins and Bates for Mr. Green, in support of a demurrer for want of equity; *Bacon and Toller* for the plaintiff, contra, were not called on.

The *Vice-Chancellor* said, that although there was a misdescription of the character in which Mr. Elliott acted, yet as the defendants might have enforced the specific performance against the plaintiff, the agreement on the principle of mutuality should be enforced at the plaintiff's instance, and the demurrer would be overruled, with costs.

Voyle v. Hughes. Nov. 5, 1853; Jan. 13, 1854.

ASSIGNMENT OF CHOSE IN ACTION.—VALIDITY OF, WHERE CONSIDERATION VOLUNTARY.

N., in exercise of her power of appointment under her marriage settlement, appointed a fund, subject to her husband's life interest, and one of the appointees assigned, for a consideration, which was voluntary, to one of the husband's daughters by a former marriage, under whom the plaintiff claimed: Held, that the plaintiff was entitled to payment of the fund.

—On the marriage of Admiral and Mrs. Noble in 1820, a sum of 3,900*l.* 3 per cent. consols, was settled in trust after the death of the husband, and in case his wife should die in his lifetime without issue and without having exercised her power of appointment, for her next of kin, according to the Statute of Distribution. In November, 1840, and after the wife's death, one of such next of kin assigned her interest in one-fifth of the fund, subject to the husband's life interest to one of his daughters by a former marriage, in consideration, as was thereby expressed, of natural love and affection, and the deed was transmitted to the trustee, and a copy given to such daughter, under whom the plaintiff claimed.

Russell, Glasse, G. S. Law, and Cairns appeared for the several parties.

Cur. ad. vult.

The *Vice-Chancellor* said, that the soundness of the doctrine in *Meek v. Kettlewell*, 1 Har. 475; had been questioned, which treated

the voluntary assignment of a reversionary interest as a mere agreement, to which this Court could give no effect. If that doctrine were to prevail, it would deprive the owners of reversionary personal property of their right of alienation, and would consequently materially diminish its value. The device of treating an assignment by deed as a mere agreement, or of supporting it by force only of a valuable consideration, was resorted to in the first place to get rid of the strict rule of law, that no possibility or chose of action could be assigned: *Thomas v. Freeman*, 2 Vern. 563; *Crouch v. Martin*, ib. 595; *Lord Carteret v. Paschal*, 3 P. Wms. 197; *Cadogan v. Sloane*, Sug. V. & P. 1119 (11th ed.); *Fortescue v. Barnett*, 3 Myl. & K. 36. Then came the more recent decision of *Kekewich v. Manning*, 1 De G. M. & G. 176, which decided, that an assignment was valid, notwithstanding the want of valuable consideration. The deed was a perfect instrument, and the doctrine did not apply, that being incomplete and without a valuable consideration, the gift was invalid in equity: *Autobus v. Smith*, 12 Ves. 39; *Edwards v. Jones*, 1 M. & Cr. 296. It was unnecessary to advert to the effect of the covenant for further assurance, according to *Cow v. Barnard*, 8 Hare, 310; *Sutton v. Chetwynd*, 3 Mer. 249; Turn. 296. The equitable right was by force of the deed of assignment transferred to Miss Noble on the execution of the deed, and no valuable consideration was required to support the transaction, and the plaintiffs were entitled to payment of the fund.

Coldwell v. Holme. Jan. 16, 1854.

CHARITABLE BEQUEST TO INSTITUTION
CEASING TO EXIST.—CY PRES.

A testatrix, by her will, gave a sum of money to the treasurer of the "Benevolent Institution for delivering poor married women at their own habitations." It appeared that she had subscribed to such an institution which was now defunct: Held, that the legacy was payable to the "Royal Maternity, or lying-in charity for delivering poor married women at their own habitations," which was the only institution of the sort.

THE testatrix, by her will, dated in 1846, gave a sum of 200*l.* to the treasurer of the "Benevolent Institution for delivering poor married women at their own habitations," and it appeared that she had subscribed to such an institution, which however ceased to exist in 1836. The bequest was now claimed on behalf of the "Royal Maternity, or lying-in-charity for delivering poor married women at their own habitations," and their treasurer now presented this petition for payment.

Milns in support; *Daniel* and *Taylor* for the residuary legatees; *Rogers* for the executor; *Southgate* for the treasurer of the defunct society.

The Vice-Chancellor said, that the bequest was to a benevolent institution for the delivery

of poor married women at their own habitations, and there was only one institution which claimed, and there could be none other, and as between it and the residuary legatee effect must be given to the testatrix's benevolent intentions. The existing institution was therefore entitled, and the costs to be paid out of the estate.

Vice-Chancellor Wood.

Atcheson v. Le Mann. Jan. 11, 12, 1854.

ISSUE AT LAW.—NEW TRIAL.—DISCOVERY
OF EVIDENCE.

A new trial of an issue was refused, with costs, as to the legitimacy of a party, on the ground of the discovery of new evidence since the trial, where it appeared that such evidence consisted almost entirely of declarations of persons who might have been subpoenaed on the trial.

THIS was a motion for a new trial, in regard to a question of legitimacy, in this suit, on the ground of the discovery of new evidence since the trial took place.

Craig and *Welford* in support; *Rolt, Daniel*, and *Jolliffe*, contra, were not called on.

The Vice-Chancellor said, that as the new evidence consisted almost entirely of declarations of parties, members of the family, who might have been subpoenaed on the trial, the motion would be refused, with costs.

Rowley v. Rowley. Jan. 13, 14, 1854.

MARRIAGE SETTLEMENT.—EXERCISE OF
POWER OF APPOINTMENT AMONG YOUNGER
CHILDREN.—SETTING ASIDE ON GROUND
OF FRAUD.

Circumstances under which the Court refused to set aside deeds of appointment under powers in a marriage settlement among younger children, on the ground the appointor had executed the deeds in consequence of an arrangement for his own pecuniary benefit.

BY a settlement, dated in 1821, certain estates were settled in trust to raise portions to the amount of 30,000*l.* for two or more of the younger children of Lord Langford, in such proportions as he should appoint, and in default of appointment among them equally. It appeared that Lord Langford had, by two deeds, appointed 5,000*l.* to the plaintiff, and 25,000*l.* to the defendant, who were the two younger children, and this suit was instituted to set the same aside on the ground they had been executed in consequence of an arrangement for his own pecuniary benefit.

The Solicitor-General, *Rolt*, and *Flather* for the plaintiff, cited *Salmon v. Gibbs*, 3 De G. & S. 343; *Daubeny v. Cockburn*, 1 Mer. 638; *Sir F. Kelly, Elmsley*, and *Shapter* for the defendant; *Bacon* and *Lewin* for the solicitor to the appointor; *V. Johnson* for the trustees.

The Vice-Chancellor said, that the deeds had been properly executed, and were in the

custody of his solicitor, although they should have been perhaps in strictness in the possession of the trustees. It appeared that Lady Langford, who was living apart from her husband was entitled to a large sum as pin-money and as jointure, and that on Lord Langford requiring a sum of 70,000*l.*, he had induced his wife to postpone the payment of her pin-money and jointure, on his executing his power of appointment in favour of the plaintiff for at least 5,000*l.*, and he accordingly did so by deed, dated January 21, 1839, and on the following day he executed the second deed appointing the remainder to the defendant. The only cases in which the Court interfered to set aside appointments under powers were, when the deed appeared to be a fraud on the donor of the power, when the fraud was upon the parties interested in the distribution of the fund, and when there was fraud both on the power given to create as well as to distribute the fund. The second deed was probably executed in order to exercise his power of appointment as to the whole fund, and it must be upheld, and the bill be dismissed, with costs.

Court of Queen's Bench.

MacLae and others v. Sutherland and others.
Nov. 18, 22, 1853; Jan. 12, 1854.

PROMISSORY NOTE.—ON BEHALF OF BANKING CO-PARTNERSHIP.—AUTHORITY.

*Certain promissory notes, payable in five years, were drawn by the directors of a banking co-partnership for themselves and the other shareholders jointly and severally for 200*l.* value received on account of the company, and were used for the purposes of carrying on the business: Held, on special case, that as the directors had authority under the deed of settlement, the plaintiffs, who held the notes as trustees under a marriage settlement, were entitled to recover thereon for principal and interest at 5 per cent.*

THIS was a special case for the opinion of this Court. The action was brought to recover the amount of certain promissory notes, dated in August, 1846, in the following form:—"We, the Directors of the Royal Bank of Australia, for ourselves and the other shareholders of the said company, jointly and severally promise to pay to George Henry Wray, or bearer, on August 1, 1851, at the Union Bank of London, the sum of 200*l.* for value received on account of the company;" and was signed by three directors and entered by the secretary. The notes were employed in the business of the company, and had come into the plaintiffs' hands as trustees of a marriage settlement. On the trial, before Lord Campbell, C.J., at the London Sittings after Trinity Term, 1852, the plaintiffs obtained a verdict, subject to this special case.

H. Hill and Cowling for the plaintiffs; *Sir F. Kelly, Bramwell*, and *G. Rochfort Clarke* for the shareholders; *Prentice* for the defendant *Sutherland*, a director.

Cur. ad. vult.

The Court said, if the parties who signed the notes had authority to bind the shareholders by a joint note, the objection that the word "severally" would only render such as actually signed liable, was untenable as the word was inoperative and might be rejected. And the notes also sufficiently expressed that all the shareholders were to be liable, if the directors had authority to make such notes without enumerating the names of all the shareholders: *Ex parte Buckley, in re Clarke*, 14 M. & W. 469; *Hall v. Smith*, 1 B. & Cr. 407; 2 D. & R. 504; and the length of time during which they had to run did not affect their validity. The question, therefore, was, whether the directors had authority. They had the ordinary powers of partners necessary for carrying on their business, and this in the present case could only be effected by borrowing money, and they must be taken to have the authority of the shareholders for such purpose: *Bank of Australasia v. Breillat*, 6 Moore, P. C. 152. Under the deed of settlement they were authorised to carry on the business of the company, and to establish branch banks, and for this purpose to raise money to be employed as capital, and therefore to make promissory notes to be given as security for the money thus borrowed. It was a transaction for a loan at 5 per cent. for a given period, the promissory note being a mere security for the repayment of the money. There was no difficulty in ascertaining the sum lent and the amount to be recovered, which included the interest from the time of the advance, and in accordance with *Denton v. Rodie*, 3 Campb. 493, the plaintiffs, who were *bond fide* holders of the notes and lenders of the amounts thereby secured, were entitled to recover, and judgment was accordingly entered for the principal and interest.

Lumley v. Gye. Jan. 14, 1854.

COMMISSION TO FOREIGN COURT TO EXAMINE WITNESSES.—COSTS OF FORMER ABORTIVE COMMISSION.

A commission to examine witnesses in Prussia had failed on the witnesses refusing to be examined except according to the Prussian law. A rule was made absolute, on payment of the costs of the former commission, for the issue of a commission to the Royal Court of Berlin, within four days, and to be returnable within a month.

THIS was a rule nisi granted on Nov. 25 last, for the issue of a commission to the Royal Court of Berlin to take the examination of certain witnesses in Prussia, on its appearing that the commission issued on June 10 last had failed by reason of the witnesses refusing to be examined unless in accordance with the rules of Prussian law.

By the 1 Wm. 4, c. 22, s. 4, it is enacted, that "it shall be lawful to and for each of the said Courts at Westminster," "and the several Judges thereof, in every action depending in such Court, upon the application of any of the

parties to such suit," "to order a commission to issue for the examination of witnesses on oath at any place or places out of such jurisdiction, by interrogatories or otherwise, and by the same or any subsequent order or orders to give all such directions touching the time, place, and manner of such examination."

Sir F. Theiger, Hoggins, and Huddleston showed cause, citing *Boelen v. Melladew*, 10 C. B. 898; *Clay v. Stevenson*, 3 A. & E. 807; 5 N. & M. 318.

The Attorney-General, Creasy, and Willes in support, referred to *Possford v. O'Connor*, 5 M. & W. 673.

The Court said, that the commission would issue on payment of the costs of the former commission, and the rule would therefore be absolute for its issue within four days, to be returnable in one month.

Turner v. Midland Railway Company. Jan. 14, 1854.

NEW TRIAL OF ACTION WHEN VERDICT LESS THAN 20*l.*, REFUSED.

*A rule was refused for a new trial in an action where the verdict passed for 15*l.* only—where the verdict, although wrong, was not perverse, and no principle was involved in the case.*

This was a motion for a new trial in this action, which was brought to recover the value of a portmanteau lost by the negligence of the defendants' servants, and on the trial before Lord Campbell, C. J., the plaintiff obtained a verdict with 15*l.* damages.

K. Macaulay in support, on the ground the verdict was against evidence.

The Court said, that as the verdict, although wrong, was not perverse, and there was no principle involved in the case—the general rule that a new trial would not be granted in cases under 20*l.* would prevail, and the rule would be refused.

Queen's Bench Practice Court.

(Coram Erie, J.)

Holland v. Fox. Jan. 17, 1854.

PATENT LAW AMENDMENT ACT.—RULE FOR INJUNCTION, ACCOUNT, AND INSPECTION.

A rule was made absolute in the first instance for an injunction, under the 15 & 16 Vict. c. 83. s. 42, where the plaintiff had obtained a verdict in an action for the infringement of a patent, and for an account within 10 days, but the application for an inspection of books was directed to stand over for such 10 days.

This was an application under the 15 & 16 Vict. c. 83. s. 42, for a rule for an injunction, and on the defendant to deliver within ten days a true account of all umbrellas and parasols sold by him since the action was brought for the infringement of the plaintiff's patent, and in which the plaintiff had obtained a verdict, and for liberty to the plaintiff to inspect the defendant's books.

Webster in support said, the rule was absolute in the first instance.

The Court said, that the rule would be made absolute for an injunction and for an account within 10 days, but the other part, for the inspection, would stand over, in order to show some particular grounds for such inspection.

Court of Common Pleas.

Helmors v. General Steam Navigation Company. Jan. 11, 1854.

NEW TRIAL OF ACTION FOR DAMAGES ON SINKING OF COAL BARGE.—QUESTION FOR JURY.

A rule nisi was refused for a new trial of an action for damages by reason of the defendants' steam vessel being navigated down the river at a greater speed than four miles an hour, whereby the plaintiff's coal barge was swamped, on the grounds that the barge was overladen and the vessel not proceeding at such speed,—those facts being questions for the jury.

THIS was a motion for a rule nisi to set aside the verdict for the plaintiff, and for a new trial in this action by the owner of a coal barge to recover damages against the defendants for having swamped his barge by the swell occasioned from running their steam vessel down the river at a greater speed than four miles an hour. The trial took place at the London Sittings after Michaelmas Term last, before Jervis, L. C. J., when the plaintiff obtained a verdict.

Knowles in support, on the ground the verdict was against evidence, the barge being overladen and the steamboat not going at a greater speed than four miles per hour.

The Court said, that as the question was one for the jury, the rule must be refused.

Crouch v. London and North Western Railway Company. Jan. 17, 1854.

RAILWAY COMPANY.—LIABILITY AS COMMON CARRIERS.—DETENTION AT TERMINATION OF LINE.

Where a railway company gave out to the public that they were common carriers, and conveyed goods to S., in England, and to G., in Scotland: Held, that they were liable for the detention of the plaintiff's parcels at the termination of their line, where, according to arrangement with other railway companies, parcels were forwarded to S. and G., and where they had so conveyed parcels for other parties than the plaintiff.

Held, also, that they were not entitled, except when the goods were dangerous or of great value, to have the quality of the contents of the parcels declared.

THIS was an action by the plaintiff, a common carrier, to recover damages for the detention of a parcel by the defendants, who were also common carriers. The matter now came

on in the form of a special case. It appeared that the plaintiff, at his receiving houses in London, collected parcels for transmission to Sheffield and Glasgow by the defendants, and packed the parcels for the several towns on the route into one large parcel, addressed to their several agents for delivery. The defendants' line towards Sheffield terminated at Rugby, and towards Glasgow at Preston, but they had entered into arrangements with other railway companies to forward luggage to those places. The defendants issued an order that packed parcels should be invoiced to the stations on their line only, and be pre-paid over their line, and that they would pay no carriage on such parcels being delivered to them by other companies or carriers, and the Midland Railway Company also issued a similar order, but the railway company from Preston to Glasgow had issued no such order.

The plaintiff, having notice of these orders, had forwarded a packed parcel to the defendants' station in London for transmission to his agent at Sheffield, and the defendants had, on not being informed of its contents in accordance with their request, refused to book it beyond their station at Rugby, from whence it was conveyed by the Midland Railway Company to Sheffield, after a detention at the former place. It however appeared that they had conveyed parcels for other persons direct to Sheffield. A similar detention also took place at Preston of a parcel directed to Glasgow, whereby the plaintiff had suffered injury in his business.

Brown and Crouch for the plaintiff; Atherton and Bovill for the defendants.

The Court said, that the defendants, who were by the Act of Parliament placed on the footing of common carriers, had held themselves out to the public as common carriers in England, and to carry from London to Glasgow. They were therefore bound to carry within reasonable limits in England all goods tendered for carriage between the places to which they professed to carry, and also to the place beyond the realm to which they had held themselves out to the public as common carriers, as well for the plaintiff as for everybody else. They had no authority to know the nature and quality of the goods tendered, although they were entitled to make inquiry with respect to dangerous articles, and to have the value declared where the goods were of great value. The plaintiff was therefore entitled to recover.

Court of Ecclequier.

Lygo v. Newbold. Jan. 13, 1854.

ACTION FOR PERSONAL INJURY TO PLAINTIFF ON REMOVAL OF GOODS.—CONTRACT.

On the defendant being hired by the plaintiff to remove her goods in his cart, she rode with his permission in his cart, and was thrown out and received injury: Held, that as the defendant had only contracted

to remove the goods, the plaintiff could not recover for the personal injury.

THIS was a motion pursuant to leave reserved to increase the damages in this action, which was brought to recover for personal injuries sustained by the plaintiff, and for damages done to certain goods by the breaking down of the defendant's cart, whilst removing such goods for her. It appeared that the plaintiff had, with the defendant's permission, got into the cart, and was thrown out and received a broken leg. On the trial, at the last sittings at Guildhall, *Pollock, L. C. B.*, had directed the jury to find for the damage to the goods only, subject to this rule.

Hoggins in support.

The Court said, that as the defendant had only contracted to convey the goods and not the plaintiff, the rule must be refused.

Ex parte Moses; Beswick v. Boffey. Jan. 15, 1854.

COUNTY COURT.—INTERPLEADER SUMMONS.—OBJECTIONS AS TO PARTICULARS OF CLAIM AND SERVICE OF NOTICE.—APPEAL.

Held, that the proper course on objection being taken to the sufficiency of the particulars of claim or of service of the notice on an interpleader summons, under the 145th rule of the County Courts, is to adjourn the case, in order to rectify the defect.

And held, that no appeal lies under that rule or under the 13 & 14 Vict. c. 61, s. 14, from an interpleader summons.

THIS was an appeal from the decision of the Judge of the Clerkenwell County Court, on this interpleader summons. It appeared that *Miss Moses*, the respondent, claimed certain goods which had been seized by the plaintiff under a judgment in the above plaint, and on the hearing, the Judge had overruled the objections as to the sufficiency under the 145th rule of the County Courts, under the 12 & 13 Vict. c. 101, s. 12, of the particulars of claim in not setting out the precise origin of the title to the goods and also of the service, and had heard the case on the merits, and decided in favour of the claim.

Ogle in support, referred to the 149th rule, which regulates the practice on an appeal, under the 13 & 14 Vict. c. 61, s. 14, by "any party dissatisfied with the determination or direction of the Court in point of law, or upon the admission or rejection of any evidence."

Robinson for the respondent, was not called on.

The Court said, the proper course where objection was taken to the sufficiency of the notice, was to adjourn the summons, under the 145th rule, in order to give a claimant the opportunity to deliver a fresh particular, but it was never intended that there should be an appeal, or that a defect in the particulars or in the service should bar the right of the claimant. The appeal would therefore be dismissed with costs.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JANUARY 28, 1854.  
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THE APPROACHING SESSION.

PROSPECTS OF LAW REFORM.

ORDINARY topics of professional interest are in a great degree absorbed by the anticipations connected with the opening of the Session of Parliament on Tuesday next.

The exciting question of peace or war can no longer be said to weigh in the balance. It seems now to be irrevocably determined that, with a population, a Court, and a ministry, equally well disposed to peace, England is about to plunge headlong into a war, the combinations resulting from which no man can control, and the termination of which it is impossible to foresee.

Wearied with the conflicting conjectures of journalists, and perplexed with the contradictory statements published under the colour of facts, the Public looks with unusual, but excusable, anxiety for an authoritative announcement of the true position of affairs, and of the circumstances which create the stern necessity that demands increased armaments, and justifies the rupture of friendly relations. Connected in men's minds with the subject of foreign policy is the imputed interference of the first subject in the realm—the husband of the Sovereign—in matters the conduct of which is supposed to devolve exclusively upon the responsible servants of the Crown. The people of England, we may venture to state, look to the meeting of Parliament, hoping and trusting to receive a satisfactory assurance that the vague but disquieting rumours, in reference to this illustrious personage, are without foundation.

Next in importance to the war question—though it must be confessed with a long interval between—comes the promised measure for improving and correcting the abuses of the representative system. In

what spirit this subject will be entertained and discussed under the frowns of “grim-visaged war,” remains to be seen. There appears to be a growing feeling that her Majesty's Government would find, in the gravity of the situation and the increased responsibilities it has produced, an ample justification for deferring, to a more tranquil season, the consideration of a topic so peculiarly calculated to excite party feeling as a change in the representation of the people.

How far “the still small voice” of Law Reform will be heard in the war fever which it is to be feared is approaching, can only be conjectured? It is reasonable to expect that those in authority will not postpone the introduction of measures of social improvement for which the public mind is fully prepared, upon the ground that increased energy and activity have become necessary in particular departments, to which circumstances have given increased importance. Lord Cranworth (for example) will not be relieved from the obligation of introducing the Bill, it is understood has been prepared under his lordship's sanction, for establishing a Central Court of Probate, because all the ability and resources of his colleagues at the head of the Admiralty, the Horse Guards, and the Ordnance, are required to prepare for impending hostilities and bring them to a speedy and honourable termination. It must be admitted, however, that in periods of public excitement it is difficult, if not impossible, to concentrate attention upon improvements necessarily limited in their operation, so that on such occasions official indolence is in a great measure relieved from “the pressure from without.” On the other hand, at such seasons, the mischievous restlessness of individuals has unrestrained scope in the general indifference which prevails, and the sinister ex-

periments of such persons require to be guarded against with more than ordinary vigilance.

Perhaps, with the exception of a few measures upon which public opinion may be said to be matured, it would be advantageous that the legal institutions of the country, which have been extensively remodelled during the last three years, should now be allowed to settle down and cement. Some further changes are, perhaps, indispensable to complete what has already been commenced, but a short respite from experimental legislation, in relation to the administration of the law, it may be predicted, will be attended with beneficial effects.

The changes produced by the new Statutes and Orders in the Courts of Equity, now only begin to be understood, their applicability is not yet fully tested, and time is required to ascertain their operation upon the vast, complicated, and important interests committed to the jurisdiction of these institutions. The extent of the revolution in Common Law practice and procedure, effected by the Act 15 & 16 Vict. c. 76, is hardly yet realised by the practitioners in those Courts, but it is satisfactory to find that the attachment of the Public to the old tribunals is unmistakably manifested, and that notwithstanding the rivalry of the County Courts, the Superior Courts of Law are in no danger of being deserted. It was publicly stated, on the authority of her Majesty's Attorney-General, that a greater number of actions have been commenced in the Common Law Courts, in the Term now closing, than upon an average of many preceding Terms, and it has been announced, that notwithstanding the diligence of the Judges, judiciously seconded by that of the Bar and the Attorneys, the Courts of Law will require to hold Sittings in Banco after the present Term, in order to prevent the accumulation or existence of arrears.

Amongst the professional results which may fairly be anticipated from war on a large scale, is an immediate diminution of the number of candidates for the Legal Profession. The opportunity, as well as the inducements, to join the naval and military service of the State, cannot fail to influence the rising generation—many will prefer the sword to the pen—and if there should be a protracted war, those who are engaged in the practice of the Profession may find some equivalent for diminished business, in the restriction of competition.

Whilst glancing at the measures con-

nected with the administration of the Law, which it seems probable may be suspended or delayed, in consequence of the excitement occasioned by a European war, we hope not to be compelled to include that most desirable and long wished for improvement—the removal of the Courts from Westminster. As our readers are already informed (see *ante*, p. 210), there is now the most satisfactory and encouraging prospect that this important measure, which has the unqualified approval of both the Premier, the Lord Chancellor, and the Chief Commissioner of Public Works, will be undertaken by the Government, and it is confidently hoped that the Chancellor of the Exchequer will not suggest any difficulties to interfere with the steps necessary for obtaining the sanction of Parliament. For the promising position in which the question now stands, it is admitted on all hands, that the Public and the Profession are mainly indebted to the perseverance, judgment, and discretion displayed by the Council of the Incorporated Law Society.

REGISTRATION OF TITLES.

IN another page will be found¹ the names of the Commissioners just appointed "to consider the subject of the Registration of Title with reference to the Sale and Transfer of Land." The Committee comprises, besides Mr. Walpole and the Attorney and Solicitor-General, several members of the Bar, and a few laymen. Two of the Commissioners, Mr. Strickland Cookson and Mr. Robert Wilson, are eminent solicitors, and the former is a member of the Council of the Incorporated Law Society. A summary of Mr. Cookson's evidence before the Select Committee of the House of Commons in the last Session, was laid before our readers at p. 192, *ante*; and his views on the subject of a General Register appeared in one of the Reports of the Law Amendment Society.² Mr. Wilson is well known as the author of an able pamphlet on registration, and he was also examined under the last Real Property Commission.

The assistance of these gentlemen, who have given so much attention to the subject, and who possess the advantage of practical experience as solicitors, will be of the greatest value on the inquiry, now to be recom-

¹ Page 240, *post*.

² See the statement of Mr. Cookson's plan in *The Legal Observer*, for 4th Sept. 1852.

menced, into the utility and practicability of a Land Register.

In our last Number (p. 211, *ante*), we gave a summary of the evidence of Mr. Edwin Field and Mr. William Williams. In reference to the opinions given by the latter witness before the Select Committee, it may be proper to extract that part of the Report which sets forth Mr. Williams's views in regard to the several plans of Mr. Cookson and Mr. Wilson.

The evidence on this point is as follows :

"It was at Mr. Hayes's suggestion that this particular scheme of Mr. Wilson's was sent to me in the year 1847, for me to look through. I do not know whether it was sent officially to me by the Real Property Commissioners. I have had to look through my papers, and I find a copy of a letter written by me to Mr. Hayes returning the scheme, and pointing out what, in my opinion, were the objections to it. I have the copy of that letter; I need not trouble the Committee with it, but I may mention that the views I now entertain were the views which I then formed after a consideration of Mr. Wilson's scheme, which I then thought, and still think, did not go far enough, because it did not sufficiently provide against the innumerable cases which occur in practice, especially under wills and settlements of limited and derivative interests, both legal and equitable, being impressed on the land itself, and forming links in the chain of title to it, and because it did not effectually mark the distinction (which I think most important to exist in considering the subject) between land as an article of sale, and land as the subject of beneficial ownership. For these reasons it appears to me that it was necessary to reconsider the whole of our system of title and conveyance as a preliminary question before we attempted to register deeds. I would, therefore, venture to submit to the Committee that before registration be introduced, some conclusion should be arrived at with respect to the objects for which its introduction is desirable; my own conviction being that its chief utility will be found in connexion with considerable changes in the Law relating to the Transfer of Real Property, and as affording means by which this species of property may be rendered easily marketable. These were the views which occurred to me when Mr. Wilson's scheme came under my notice, and which I still entertain.

"291. Did Mr. Wilson make any alterations in his scheme?—I am not aware that he did?

"292. In what respect did Mr. Wilson's scheme agree with the scheme which Mr. Cookson has propounded to us?—To some extent, and to some extent only.

"Mr. Headlam.]—Mr. Wilson's scheme is more fully explained, is it not, in the evidence given before the Real Property Commissioners?—It is, and I need not, therefore, now refer to it, except to say that the scheme now proposed is founded on a different principle.

"294. Mr. Walpole.]—Now you have heard the evidence given by Mr. Cookson and Mr. Field, and the plan suggested by them, do you, in the main, agree in that plan as suggested by them?—I do.

"295. Are there any points in which you would be inclined to disagree with or differ from them?—No, not in which I should be prepared to disagree; but there were some points which it has occurred to me were not quite sufficiently brought out by Mr. Cookson's evidence.

"296. What are those?—I think it not sufficiently pointed out to the Committee what were the particular interests in land of which it was proposed a legal or registered ownership should for the future be permitted to exist. Ownerships in fee only were spoken of. I think Mr. Scully made some observations about leases, but the point was not sufficiently brought to the notice of the Committee; the scheme would proceed upon the assumption that those interests in land, which at the present moment form, practically, the subject of sale and transfer as between a vendor and purchaser, would still continue to be, under the proposed system, the subjects of legal or registered ownerships, so that for the future a registered ownership would consist either of land in fee, or land held by way of lease; or rent-charges in fee, which the hon. member for Sheffield is perfectly well aware are very common in Lancashire.

"297. Then the ownership which would be placed upon the register would be an ownership either of the fee, or of the rent-charge, or of the lease, as I understand you?—Precisely."

PARLIAMENTARY DIVISIONS ON THE ATTORNEYS' CERTIFICATE TAX.

THE EDINBURGH REVIEW.

IN the new Number of the *Edinburgh Review*, a very just commentary appears on the inconsistent divisions in the House of Commons, particularly on the Attorneys' Annual Certificate Tax and the Advertisement Duty,—showing, we think very clearly, that the parties who had the parliamentary management of the case of the attorneys were not answerable for the last adverse division. It was indeed a reversal by a smaller section of the House of a previous decision, for the sake of giving a preference to the total, instead of the partial, repeal of the Advertisement Duty.

The Reviewer says :—

"By the present rules of the House, even 20 members, though opposed by 19, may bind the whole House to an irrevocable vote. Nor, in less exceptional cases, does the final judgment of the House depend upon the aggregate numbers in a division. For example, in the last

Session, Lord Robert Grosvenor's Attorney's Certificate Duty Bill, had been brought in by a considerable majority¹ in a House consisting of 391 members: it was rejected on the second reading, in a House of 293 members only. And again, the fate of the Advertisement Duty affords a still more striking instance of the reversal of decisions, by smaller numbers than those by which they were originally agreed to. On the 14th April, after one of the very best speeches of the Session, Mr. Milner Gibson carried a resolution for the repeal of the Advertisement Duty in a full House of 374 members (the respective numbers being 202 and 171). The Chancellor of the Exchequer, however, at a subsequent period, instead of adopting this vote as the expression of the will of the House, proposed a reduction of the duty from 1s. 6d. to 6d. This compromise was not accepted by Mr. Milner Gibson and his friends; and on the 1st July, the battle was renewed. The Government at first succeeded in carrying their proposition by a majority of 10 only, in a House of 213 (the numbers being 111 and 101); and reversed, for a time, the previous decision of 374 members. Their triumph was brief. It was the night of a state ball at Buckingham Palace. The supporters of the Government hastened from the division lobby to the ball-room; while their sturdier opponents, resolute of purpose and not much given to dancing—even if invited to dance—continued the fight in a thin House of 136 members. It was now too late to rescind the previous vote directly: but being well skilled in fence, they succeeded in affirming, by a majority of 9 (the numbers being 72 and 63), that the future Advertisement Duty should be 0l. 0s. 0d.! After much consideration, the Government resolved not to disturb this determination; and we are indebted to 72 members and a Queen's ball, for our present complete exemption from a tax, which nearly one-third of the House had previously failed in repealing. The luckless Attorneys were the only class who suffered in this contest; Mr. Gladstone, in surrendering the sixpence on advertisements, begged hard for the Certificate Duty as an equivalent; and for this sixpence the opponents of 'taxes on knowledge' consented to the sacrifice of their legal friends.

"On numerous occasions in every Session, the members present at a division are considerably less than 100; and a division with so many as 300 is comparatively rare. To refer again to the last Session for examples:—out of 257 divisions, there were 20 of less than 100 members; 142 of more than 100, and less than 200; 53 of more than 200, and less than 300; and 39 only exceeding 300. The average number present in all the divisions was 101."

There were indeed very few divisions,—we believe not more than 10 out of 257 in the whole Session,—in which the number of members present, and the majority in

favour of the measure, equalled that of the attorneys on the introduction of the Bill. Let it be recollected, also, that this was the voice of the new Parliament and carried against a Government composed of Whigs, Conservatives, and Liberals,—following in the wake of majorities in the two preceding Sessions. It should be borne in mind, also, that attorneys have never been favourites with any class of the community. They have practically to put the Law in force, and as there must be a losing party in every cause, we need not marvel at their unpopularity. On the whole, perhaps, it is surprising that so much progress has been made, and that the attorneys and solicitors have found so many able and independent members in the Legislature to support their case. Let them persevere, and they must ultimately succeed.

QUESTIONS AT THE EXAMINATION.

Hilary Term, 1854.

I. PRELIMINARY.

1. WHERE, and with whom, did you serve your clerkship?
2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.
3. Mention some of the principal law books which you have read and studied.
4. Have you attended any, and what, law lectures?

II. COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

5. What is the form of the commencement of an action?
6. Supposing a defendant about to quit the country after a writ of summons issued against him, what steps must be taken to prevent his so doing?
7. What is meant by a concurrent writ, what is the object of it, and is there any limited time within which it must be issued?
8. If there be difficulty in finding a defendant to serve him with process, what step must be taken to enable the plaintiff to proceed?
9. Are all judgments by default final?
10. Is a writ of inquiry necessary now in all cases where the defendant has suffered judgment by default?
11. Is there any alteration lately in the process of ejectment? and if so, state it.
12. What are the proceedings under the Common Law Procedure Act in lieu of judgment as in case of a nonsuit?
13. Can the defendant plead the bankruptcy of plaintiff as a bar to the action, as a matter of course?
14. Upon service of a rule or order, must the original be always shown?
15. If no steps have been taken in a cause

¹ The majority was 52.

for one year from the last proceeding, what is the course to be taken by the party wishing to proceed?

16. Must the successful party under an award wait until the time for setting aside the award has expired before he can tax his costs?

17. If a rule nisi be granted to set aside proceedings with costs, and is discharged, what is the result as to the costs?

18. Can an infant bring an action, and how?

19. In an action for seduction, who must bring it, and in what form?

III. CONVEYANCING.

20. By what words may an estate tail special, be aptly created?

21. What covenants, powers, and provisos, are usually inserted in a mortgage in fee?

22. *A.* is tenant for life in possession; with remainder to *B.* in tail. Can *B.* by any, and what, means convert his estate tail into a fee simple?

23. Conveyance unto and to the use of *A.*, *B.*, and *C.*, and their heirs. What estate do they respectively take, and how can they severally dispose thereof?

24. By bargain and sale enrolled, an estate is conveyed to *B.* and his heirs, to the use of *C.* and his heirs. What estates, legal or equitable, do *B.* and *C.* respectively take?

25. *A.* having power to appoint the fee, appoints to *B.* and his heirs, to the use of *C.* and his heirs, in trust for *D.* and his heirs. Which of these parties, *B.*, *C.*, and *D.*, takes the legal, and which the beneficial estate?

26. Money in the funds and on mortgage is settled on *A.* for life, remainder to *B.*, a *feme covert*, absolutely. Can *B.*, with or without her husband, by any, and what, means, pass her reversionary interest to a purchaser?

27. Adwoson is mortgaged in fee; the incumbent dies. Who has the right to present to the living,—the mortgagor or mortgagee? Give the reason why the right to present is in the one or the other.

28. *A.* is possessed of a leasehold estate which he agrees to sell to *B.*, without any special conditions as to title. What title has *B.* a right to require?

29. Is there any, and what, difference between dower and freebench?

30. Mortgagee in fee dies intestate, mortgagor applies to redeem: What persons are necessary parties to the re-conveyance, and for what reason?

31. *A.* and *B.* exchange lands, *B.* is afterwards ousted from the land he received in exchange: Has he any, and what, remedy, and against whom?

32. Estate is settled to the use of *A.* for life, remainder to *B.* in tail; remainder to *C.* in fee: Who is entitled to the custody of the title-deeds?

33. What is the rule in Shelley's case, and where is such rule to be found?

34. *A.* dies intestate seized of estates in fee simple, leaving a grandson (issue of a deceased daughter); a great grand-daughter (issue of a

deceased son); and two daughters. Who will be entitled by descent to *A.*'s real estates?

IV. EQUITY AND PRACTICE OF THE COURTS.

35. In what cases will a Court of Equity decree a specific performance of a contract not reduced into writing?

36. Distinguish generally the class of cases in which bills in Chancery are expedient;—in what cases claims are applicable; and when relief may be obtained by summons before a Judge in Chambers.

37. In what cases will a Court of Equity decree specific performance of a contract for sale of land not reduced into writing?

38. Will the Court interfere to protect the unauthorised use of trade marks, and in what cases, and what must the plaintiff prove in order to succeed?

39. What relief will the Court give in the cases referred to in the last question?

40. What constitutes part performance of a verbal contract for purchase of freehold land sufficient to induce a Court to decree specific performance?

41. State generally in what cases the Court of Chancery will interfere by way of injunction.

42. Can an executor by any, and what, means give priority to one creditor of his testator over others, after a bill has been filed to administer the estate?

43. Within what time must a defendant make his defence to a bill or claim in equity?

44. State the different modes of defence he may adopt?

45. What is the difference between a plea and a demurrer?

46. An infant must sue by his next friend. Is any, and what, formality required in the appointment of next friend?

47. How do you enforce the appearance of a defendant to a bill or claim in Chancery?

48. How can you enforce an appearance by an infant or married woman?

49. State generally the practice in presenting, serving, and bringing to a hearing a petition.

V. BANKRUPTCY, AND PRACTICE OF THE COURTS.

50. Describe the principal objects of the Bankrupt Law, as existing in this country.

51. Enumerate the principal Statutes which have been passed since 1820, with relation to the Bankrupt Law, and the most important changes made thereby.

52. Has the Court of Bankruptcy, as now established, *original* jurisdiction, or is its jurisdiction delegated by any other Court or authority?

53. Describe in what mode an adjudication in bankruptcy against a trader can be obtained by a creditor, and who is entitled to obtain it?

54. What is the evidence necessary to obtain an adjudication of bankruptcy on the application of a creditor?

55. In what cases, and by virtue of what Statute, can a trader obtain an adjudication of

bankruptcy against himself; and what facts must be proved in order to obtain such adjudication?

56. What are the powers now in force for the collection of the bankrupt's estate, and by whom are they principally carried out?

57. Describe the penal branches of the Bankrupt Law, and the acts or omissions of the bankrupt which will subject him to the penalties.

58. By whom, and in what manner, and at what time, is the official assignee appointed or chosen in each estate?

59. What are the benefits a bankrupt will derive from a strict compliance with the Bankrupt Law.

60. In what ways, or by what instrument, is the judgment or opinion of the Court of Bankruptcy expressed, as to the conduct of the bankrupt; and what is the nature and effect of such instrument?

61. What are the names or description of the principal officers of the Court of Bankruptcy, and what are the particular duties of each?

62. Is there any, and what, difference in the mode of proceeding to bankruptcy against a trader who is a member of Parliament, from that of proceeding against any other trader?

63. What are the consequences of becoming bankrupt to a member of the House of Commons, and in what cases do those consequences attach?

64. By the commission of what acts does a trader disqualify himself from obtaining the benefit of the Bankrupt Law, and what are the consequences to him?

VI. CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

65. Have all the Superior Courts concurrent jurisdiction in criminal matters?

66. Name the Supreme Criminal Court.

67. What is the exception to its jurisdiction?

68. Who is supreme coroner of the realm?

69. What is the mode of reviewing questions of law in criminal cases?

70. What is the jurisdiction of the Central Criminal Court?

71. Of what description are the commissions of the Judges?

72. What offences are tried before Quarter Sessions?

73. What misdemeanors are excepted?

74. How are the criminal cases at Quarter Sessions reviewed?

75. What is the course of proceeding in an appeal on a conviction?

76. Who appoints magistrates?

77. State the nature and form of a writ of *mandamus*.

78. What is the ordinary purpose of it, and how is its sufficiency to be supported or opposed?

79. What is the liability to costs of the party applying for, or resisting the issuing of the writ?

CONSOLIDATION OF THE STATUTES.

As to the consolidation of *Permanent Laws*, Mr. Coode, in his report, observes that—

"Leaving transitory matters aside, to participate, it may be, in the benefit of any improvement to be effected in the expression and form and operation of the permanent law, and confining our expression henceforth to the latter, it is to be observed, that all the principles of arrangement and expression propounded in relation to the digestion of the law will apply to the original expression of that which it may be determined to consolidate, and that when the requisite selection of matter to be consolidated has been made by the use of that more practical and political judgment required for its safe performance the ministerial duty of arranging and expressing the matter falls again upon the compiler, and he who has prepared the digest from the old law will equally well or equally ill prepare a consolidation from that digest, and from his practical instructions. As to such of the old law as is to be retained and re-enacted unchanged, its expression in the digest will be its expression in the consolidated law, and it will only be the new matter which will involve a new labour to the draftsman.

"As no consolidation will ever be final while men's circumstances change,—as it is most important, even for the retention of what is best, to facilitate its adaptation to the change of views of those who are to use it,—and as the best is subjected to danger by indissoluble connexion with what is bad,—it is most desirable, in every point of view, that consolidation should be so effected as to be most easily susceptible of every change which the legislature may from time to time desire to effect; that it should not be an obstacle, as solemn codes have often been, to the infusion of better principles or more convenient practices; but that, on the contrary, it should, if possible, be made a positive facilitation to every act of subsequent legislation.

"Nothing would more facilitate the minutest amendments of a law than its original expression in the minutest possible articles; for a minute change would disturb but a minute article, not dislocate a system; a larger change would be more likely to correspond definitely with a definite number of such articles, and their amendment or excision would take place with a certainty and accuracy of effect in proportion to their original logical minuteness of subdivision.

"It is scarcely a less recommendation of a minute division of the law by articles, that it would compulse the draftsman into both condensed and lucid expression; and, as *quicquid melius spectatur in minimis*, the difficulty of reading and understanding the law, even by the learned, but most of all by the unlearned, would in a connected order be reduced nearly in the proportion of the succinctness of the individual articles.

"But although it is very useful thus to subdivide an Act into minute articles, it is, on the other hand, most pernicious to subdivide and disperse the parts of one subject in *different* Acts. Nothing contributes so effectually to the due composition of all its parts, as the presence to the mind of the legislator and the draftsman of the whole of the connected matter. Nothing conduces in an equal degree to simplicity and clearness and compactness as the consideration and expression at the same time of all that is substantially, incidentally, or logically connected. No one thing—perhaps not all influences together—has produced so much confusion in the law as the practice of scattered legislation, of references, adoptions, and their consequences, citations, preambles, non obstante clauses, and the like incumbrances."

The proposed chief rule of framing Statutes is thus propounded:—

"It is of the first importance to simple, clear, and effective consolidation that all that is incidental to any one subject be included in one Act. In the general and permanent law no just occasion exists for two identical provisions; no just occasion for an adoption by reference; no admissible use of such forms as 'the Consolidated Clauses' Acts,' applicable to transitory and private and local legislation. The rule for effectual consolidation is to disregard any temptation to shorten any Act by the device of reference or adoption, — to include in each Act frankly all that is logically part of its subject; in short, in each Act to include *one subject, the whole of that subject, and nothing but that subject.*" * * *

The following cautious course of proceeding is suggested to effect the objects in view:—

"Nor is it by any means necessary that subjects so comprehensive, and involving so considerable an exertion of practical and political discretion, should be chosen for the subjects of consolidation; not only does a comprehensive object involve a larger amount of labour and a greater exertion of ability in its digestion, but it necessarily includes more subjects which will give occasion to parliamentary and other discussion, and so in both ways retard the progress of the process.

"It is no doubt greatly conducive to logical consistency to take into view, and subject to one treatment the largest possible aggregate of analogous or connected subjects; but logical consistency, however desirable, is not a prime object of legislation, and is obtained too dearly, when practical, specific, individual adaptation of the law to the circumstances,—when particular fitness,—is sacrificed to formal simplicity. It is neither desirable, nor, if it were desirable, would men be prepared to submit to it, that the law should be systematized by any artificial or logical process, or by any other than that natural organic process by which men discover, apply, and assimilate the legal provisions most fit for each case, in which process they are in-

cessantly developing the application of every useful rule to all the variety of cases to which it may be practically applicable. * * *

"The elements, whatever they be, with which legislation can deal, have, as shown in the previous paper, a certain indissoluble relation to each other, and one order alone in which they can be logically treated, and this method is as applicable to the smallest fragment of the law, to a single phrase in legislation, as to the entire body of the law. Every separate fragment would have to be treated in the same way; and when any number of fragments connected by their subject matter have been so consolidated at different times and by different hands, their simple re-enactment under one head would be a consolidation of the whole.

"It results that consolidation can be most easily effected and proceed with most rapid effect, and with the most certain prospect of eventual assimilation and consistency, if it be undertaken in the smallest possible parts.

"And in order not to incur danger of disturbing portions of the law already sufficiently accessible and intelligible, it might be well to make a commencement chiefly on those subjects which by their acknowledged unsatisfactory state the most require a systematic and ameliorative treatment. All that is necessary is for those who are engaged in the process to have a common understanding of the nature and practical application of the process.

"Still the work of consolidation would not be done in any case, unless the subject taken in hand were sufficiently distinct and complete of itself, had sufficient unity of character to allow of its being treated as a whole, to allow of the coterminous repeal of the Statute Law previously occupying the ground which the Consolidated Law is to occupy, and to dispense absolutely with all citation and reference to other statutory matter. Unless this be done, the multiplicity, cumbrousness, intricacy, and confusion now justly complained of, and which it is the object of consolidation to remove, will only be commenced afresh and perpetuated."

The supposed dangers of consolidation to the Common Law and to judicial interpretation are thus stated and considered:—

"The first danger apprehended, that of interfering by surprise or mischance with the Common Law, may be wholly avoided by the instruction to the digester to adhere to the very terms of the Statute Law to be consolidated. If this rule be observed, any disparity between the terms of the digest and those of the Consolidating Act would always display any encroachments or contractions in the latter, and indicate the extent to which the field of the Common Law is invaded or enlarged by its operation.

"Indeed the more probable operation of the process of Consolidation would, inasmuch as it would chiefly tend to remove a vast mass of anomalous, heterogeneous encroachments of the Statute Law made in various times on the

Common Law, and still by their position in the statute book blockading and preventing the development of the Common Law,—the operation would, I say, tend rather to enlarge and disencumber the field of the Common Law than to encroach upon it.

"But another objection felt is, that by Consolidation we might lose the advantage of those beneficial interpretations and applications which the Courts of Law have put from time to time on the existing Statute Law.

"It is wholly a matter of choice, which may be adopted or rejected, whether a Consolidation shall operate so or not. If the legislature please to retain the exact combined effect of an old statute, and its existing interpretations, there is nothing more to be done than to re-enact the operative parts in *ipsisimis verbis* of the old statute, and all the interpretation which has hitherto been made or would in the course of time have been made on the old statute will, *ipso facto*, as to the past interpretation, apply to those words in the re-enactment, and the prospective interpretation, by all analogy, upon the same data, would itself be the same.

"It is true, however, that a large quantity of judicial decision upon the Statutes made merely to remove the conflict of parts would become useless, and very beneficially become useless, so soon as those conflicting parts by Consolidation were made consistent.

"And all that mass of construction which has turned upon the question whether and how far a later enactment controls, enlarges, limits, or supersedes an earlier one, would also undoubtedly become useless so soon as the existing effect of the later and the earlier were brought into synchronous operation in one act.

"And so of all those constructions as to the question whether two or more enactments be co-ordinate, or one subordinate to another,—which would become useless and inoperative so soon as the relation of generality or speciality was shown by the places occupied by the respective provisions of one consolidated enactment.

"As to all this mass of judicial construction, it is not law, it is one almost unmitigated evil, only rendered necessary and endurable by the fear of one still greater. It is but the cobbling of statutory provisions not originally made to fit their subject matter, and not made so as to hold together, and few happier results would flow from Consolidation than such a consistent reformation of any part of the law as would at once abolish all the constructions that have ever been applied to it, and all future construction other than the plain reading of consistent terms. This is a result too perfect to be hoped for, but an approach to it in any degree is not to be held forth as a subject of alarm to us."

INNS OF COURT.

PUBLIC EXAMINATION OF THE STUDENTS.

11th, 12th, and 13th days of January, 1854.

THE Council of Legal Education have awarded to—

Jasper Kenrick Peck, Esq., Student of Lincoln's Inn, a Studentship of Fifty Guineas per Annum, to continue for a period of Three Years.

Walter Robinson, Esq., Student of the Inner Temple, a Certificate of Honour, as having passed the second best Examination.

Charles Piffard, Esq., Student of Lincoln's Inn; *Henry Rowcliffe, Esq.*, Student of the Inner Temple; and *J. George Norton Darby, Esq.*, Student of Lincoln's Inn, Certificates that they have satisfactorily passed a Public Examination.

By Order of the Council,

(Signed) RICHARD BETHELL, *Chairman.*
Council Chamber, Lincoln's Inn,

17th January, 1854.

QUEEN'S EQUITY COUNSEL.

ARRANGEMENT AS TO COURTS.

THE following arrangement has been made (21st January), by the Queen's Equity Counsel, as to the Courts in which they will for the future practise:—

Master of the Rolls.

R. P. Roupell, Esq.

Edward John Lloyd, Esq.

Roundell Palmer, Esq.

Brent Spencer Follett, Esq.

Vice-Chancellor Kindersley.

C. T. Swanston, Esq.

C. Purton Cooper, Esq.

J. G. Teed, Esq.

James Campbell, Esq.

John Bailly, Esq.

William Bulkeley Glasse, Esq.

James Anderson, Esq.

Vice-Chancellor Stuart.

J. Walker, Esq.

L. J. Wigram, Esq.

James Bacon, Esq.

Richard Malins, Esq.

William Elmsley, Esq.

Richard Davis Craig, Esq.

Vice-Chancellor Wood.

John Rolt, Esq.

Thomas Chandless, Esq.
 John William Willcock, Esq.
 William Thomas Shave Daniel, Esq.
 W. M. James, Esq.

PRACTICE IN TAXING COSTS IN CHANCERY.

To the Editor of the Legal Observer.

SIR,—The taxation of costs in Chancery really seems to call for some alteration. The practice is not to issue a warrant upon any bill of costs until the whole of the bills to be taxed are left. This necessarily causes some few days' delay (probably weeks in some cases) before the party having charge of the order can obtain a warrant to tax. On his application for such warrant, notwithstanding all the costs are left, he is then informed, that as well his papers and vouchers as those of all other parties, must be left before he is allowed the warrant. This causes some few days further delay, and when all is completed, he obtains his warrant returnable in about three weeks.

Surely some better practice should be adopted than that of compelling a plaintiff to wait a fortnight before he can obtain a warrant to tax his bill, and that returnable three weeks after. The three weeks should run from the time he has left his bill, with liberty for the Taxing Master's Clerk to alter the appointment in case the other bills and papers are not left within a fortnight, and, if necessary, warrants could be granted for the purpose of having them brought in within the time appointed.

No inconvenience would arise by adopting this course, as many parties would be but too glad to avail themselves of the vacant appointment:—only having to wait a week to tax their costs instead of three. E.C.

LOCAL AND PERSONAL ACTS.

Declared Public, and to be Judicially Noticed.

16 & 17 VICT. 1853.

[Concluded from page 199.]

183. An act to enable the Newry and Enniskillen Railway Company to extend their Railway to the Landing Quay at Newry, to effect a Junction with the Dublin and Belfast Junction Railway, and for other purposes.

184. An act for making a Railway from Worcester, with certain Branches therefrom, and for other purposes.

185. An act for improving and maintaining the Port and Harbour of Westport in the County of Mayo.

186. An act for making a Railway from the North-western District of the Metropolis to Battle Bridge in the County of Middlesex.

187. An act to enable the West Cornwall Railway Company to make certain new Railways; and for other purposes.

188. An act for making a Railway from the

Scottish Central Railway near Loaninghead to the Town of Crieff.

189. An act for making a Railway from Tralee to Killarney.

190. An act for consolidating and amending the Powers of the Acts of "The Imperial Continental Gas Association."

191. An act for reclaiming, inclosing, and appropriating certain Parts of the Harbour or Estuary of Castlemaine and the Creeks of Caragh and Rossbehy in the County of Kerry.

192. An act to revive and amend the Powers of the Acts relating to the Chard Railway Company, to regulate the Capital of the Company, and to enable them to extend their authorised Railway into Taunton.

193. An act for constructing a Railway and Landing Places within the Borough of King's Lynn, for regulating the Share Capital of the East Anglian Railways Company, and for other purposes, and of which the Short Title is "The East Anglian Railways' Act, 1853."

194. An act for the Improvement of the Borough of Limerick.

195. An act for enabling the Monmouthshire Railway and Canal Company to make new railways; and for other purposes.

196. An act to enable the Severn and Wye Railway and Canal Company to improve their Railway and Harbour; and for other purposes relating to the Company.

197. An act for making a railway from the South Wales Railway at Britonferry to Glyn-corrwg in Glamorganshire, to be called "The South Wales Mineral Railway."

198. An act to consolidate and amend "The Staffordshire Potteries Waterworks Act, 1847," and "The Staffordshire Potteries Waterworks Extension Act, 1849," and to extend the Provisions and enlarge the Powers thereof.

199. An act for making a Railway from Stamford Baron in the County of Northampton to the Great Northern Railway at Essendine in the County of Rutland, and for other purposes connected therewith.

200. An act for better paving, draining, cleansing, lighting, watching, supplying with Water, regulating in regard to Markets and other purposes, for making new Streets, and otherwise improving the Town of Galway.

201. An act for regulating the depasturing and Management of certain Pastures in the Parish of Richmond in the County of York.

202. An act to consolidate the Acts relating to the Cork and Bandon Railway Company, to authorise the Company to construct Extension and Branch Railways, and for other purposes.

203. An act for granting further Powers to "The Electric Telegraph Company," and to such Company to make Arrangements for the working of Telegraphs adjoining their Works.

204. An act for authorising the South Wales Railway Company to deviate the Line of their Railway in the Forest of Dean, and for other purposes.

205. An act to enable the London and North Western Railway Company to make a Railway to connect the Buckinghamshire Rail-

way with the Oxford, Worcester, and Wolverhampton Railway.

206. An act for reclaiming from the Sea certain Lands near Harwich, for constructing Docks and a Pier on such Lands, and for other purposes.

207. An act for making a Pier and Breakwater in the Bay of Galway, and for conferring additional Powers on the Galway Harbour Commissioners, and for other Purposes.

208. An act for making a Railway from Banbridge to join the Dublin and Belfast Junction Railway at Scarvagh.

209. An act for granting further Powers in reference to the leasing and selling the Undertaking of the South Wales Railway Company to the Great Western Railway Company, and authorising working Arrangements between the said Companies, and for other purposes.

210. An act to enable the South Wales Railway Company to extend the Pembroke Line of their Railway to Pennar Mouth, and to make a Deviation in their said Pembroke Line; and for other purposes.

211. An act to reduce and regulate the Tolls payable in respect of Traffic passing between Liverpool and certain Places on the Liverpool, Crosby, and Southport Railway, and also the Payments or Tolls payable to the Lancashire and Yorkshire and East Lancashire Railway Companies in respect of Traffic to and from the last-mentioned Railway; and for other purposes.

212. An act to extend the Periods limited for completing and for purchasing Lands for the Stratford-upon-Avon and Kingswinford Branches of the Oxford, Worcester, and Wolverhampton Railway, and to extend such respective Branches, to construct a Branch Railway to Stourbridge, and to authorise the raising of certain Sums of Money by Preferential Shares, and for other purposes.

213. An act for the Construction and Maintenance of a Harbour at Llandudno in the County of Carnarvon.

214. An act for making a Railway from Wellington to Coalbrookdale, and an Extension to the River Severn, all in the County of Salop; and for other purposes.

215. An act for the Incorporation of the Westminster Association for improving the Dwellings of the Working Classes.

216. An act for enabling the London and North Western Railway Company to construct a Railway from Crewe to Shrewsbury, and other Works in connexion with their Undertaking; and for other purposes relating thereto.

217. An act for making a Railway from the Newport, Abergavenny, and Hereford Railway in the Parish of Llanvihangel Pontymoyle in the County of Monmouth to Coleford in the County of Gloucester, with a Branch to the Monmouth Gas-works: and for other purposes.

218. An act to enable the Warrington and Altrincham Junction Railway Company to make Deviations and Branches at Warrington, and to use certain neighbouring Railways.

219. An act to enable the South Sea Com-

pany to enter into Arrangements with certain Proprietors of the Company.

220. An act for the Improvement of the Town of Rochdale, and for providing a Cemetery there, and for other purposes, and of which the Short Title is "The Rochdale Improvement Act, 1853."

221. An act to enable the Eastern Union Railway Company to redeem their Preference Shares; and for other purposes.

222. An act for making a Railway from the London and North Western Railway at Willesden to the North London Railway, with a Branch to the North and South Western Junction Railway, to be called "The Hampstead Junction Railway," and for other purposes.

223. An act for making a Railway from the Great Northern Railway at Boston in the County of Lincoln to the Great Northern Railway at Bakstone in the same County, and for other purposes.

224. An act for incorporating the Life Association of Scotland, for enabling the said Association to sue and to be sued, to take and hold Property, and for other purposes relating to the said Association.

225. An act for the Appointment and Regulation of Vestries in the Parishes of Saint Margaret and Saint John the Evangelist in the City of Westminster.

226. An act to amend an Act, intituled "An Act for incorporating the East Indian Railway Company, and for other purposes connected therewith."

227. An act for making a Railway from the Oxford, Worcester, and Wolverhampton Railway near Hartlebury in the County of Worcester to the Borough of Shrewsbury in the County of Salop, with a Branch to be called "The Severn Valley Railway;" and for other purposes.

PROFESSIONAL LISTS.

PERPETUAL COMMISSIONERS.

Appointed under the Fines and Recoveries' Act, with dates when gazetted.

Spurr, James Frederick, Gainsborough, in and for the parts of Lindsey, in the County of Lincoln. Dec. 30.

Townsend, Jackson, Birkenhead, in and for the County of Chester. Jan. 10.

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Appointed under the 16 & 17 Vict. c. 78.

[For the previous Lists see pp. 106, 161.]

Abraham, George Frederick, 6, Great Marlborough Street.

Bentham, Francis, 22, Lincoln's Inn Fields.

Biggenden, John, 5, Walbrook.

Bird, James, 5, New Inn.

Bockett, Dan. Smith, 60, Lincoln's Inn Fields.

Bower, Thomas Holme, 46, Chancery Lane.

Brown, Charles James, 10, New Inn.

Burkett, Edw., Curriers' Hall, London Wall.

Butt, Robert James, 97, Great Russell St.
 Callow, Joseph, 4, College Hill, City.
 Carew, George, 22, Lincoln's Inn Fields.
 Chamberlayne, Alfred Frederick, 31, Great James Street, Bedford Row.
 Chester, Edward, 11, Staple Inn.
 Church, Edmund Boyle, 38, Southampton Buildings.
 Clarke, Wm. Tredway, 30, Great James St.
 Clayton, John, 10, Lancaster Place, Strand.
 Clode, Charles Mathew, 2, Gray's Inn Sq.
 Clowes, Ellis, 10, King's Bench Walk, Temp.
 Clowes, John Ellis, 10, King's Bench Walk.
 Collisson, William, 28, Great Russell Street.
 Cox, George, 14, Sise Lane.
 Davidson, Septimus, Weavers' Hall, Basinghall Street.
 Dawes, Richard, 9, Angel Court.
 De Jersey, Hy., 2, Little St. Ann's Lane, City.
 Denton, Henry, 6, New Sq., Lincoln's Inn.
 Dunster, William Hilliard, 3, Henrietta St., Cavendish Square.
 Emmet George Nelson, 14, Bloomsbury Sq.
 Few, Chas., jun., 2, Henrietta St., Covent Gar.
 Field, Ed. W., 41, Bedford Row.
 Ford, Matthew, 8, Lincoln's Inn Fields.
 Fox, John Elliott, 40, Finsbury Circus.
 Freeman, Luke, 39, Coleman Street.
 Gant, John Castle, 37, Nicholas Lane, Lombard Street.
 Grant, Fred. Allan, 13, King's Road, Bedford Row.
 Gray, George Mounsey, 9, Staple Inn.
 Greator, Wm. Anthony, 58, Chancery Lane.
 Hacon, Wm. Macmurdo, 31, Fenchurch St.
 Hine, Wm., 32, Charter House Square.
 Hollingsworth, Nathaniel, 24, Gresham St.
 Hook, St. Pierre Butler, 9, Lincoln's Inn Fields.
 Hooker, James, 8, Bartlett's Buildings.
 Jackson, Robert, 41, Bedford Row.
 Jones, Charles James, 19, Spital Square.
 Jones, Richard Minshull, 190, Tooley Street.
 Jones, William, 7, Crosby Square.
 Keighley, Thomas Dodd, 73, Basinghall St.
 Keightley, Archibald, 43, Chancery Lane.
 Kelly, James Birch, 1, Inner Temple Lane.
 Kennedy, Thomas, 26, Chancery Lane.
 Letts, John, 8, Bartlett's Buildings.
 Levin, Hy., 32, Southampton Street, Strand.
 Lewis, Wm., 6, Raymond Buildings.
 Loftus, Thomas, 10, New Inn.
 Loughborough, Thomas, 23, Austin Friars.
 Lowe, Rt. Manley, 2, Tanfold Ct., Temple.
 Master, Geo., 22, Duke St., Grosvenor Sq.
 Meymott, Wm. Joseph, 86, Blackfriars Road.
 Milne, Nathaniel Chas., 2, Harcourt Buildings, Temple.
 Murray, William, 11, London Street, City.
 Nethersole, Henry, 3, New Inn.
 Nettleship, Thomas, 4, Trafalgar Square, Charing Cross.
 Norton, William Hebler, 1, New Street, Bishopsgate.
 Ouvry, Frederic, 13, Tokenhouse Yard.
 Palmer, Robert Samuel, 4, Trafalgar Square.
 Plumley, Peter, 27, Moorgate Street.
 Pownall, William, 9, Staple Inn.

Randall, John, 10, King's Bench Walk.
 Ranken, Charles, 4, South Square.
 Raw, Joseph, 7, Farnival's Inn.
 Rivington, Charles, 1, Fenchurch Buildings.
 Robinson, George M., 1, Parish Street, St. John's, Southwark.
 Scadding, Edwin Ward, 1, Gordon Street, Gordon Square.
 Storey, Andrew, Featherstone Buildings.
 Street, Thomas Henry, 1, Brabant Court, Philpot Lane.
 Tattershall, Edward Brooksbank, 9, Great James Street.
 Taylor, James Wells, 28, Great James Street.
 Tippetts, Jas. Berriman, 2, Sise Lane.
 Tompson, Edward, 4, Stone Buildings.
 Torr, John Smale, 38, Bedford Row.
 Turner, Joseph Holden, 8, Chancery Lane.
 Vallance, Henry, 20, Essex Street, Strand.
 Vizard, Wm., jun., 61, Lincoln's Inn Fields.
 Walters, John Eldad, 9, New Square, Lincoln's Inn.
 Watson, Barclay Farquharson, 36, Lincoln's Inn Fields.
 Weatherall, Edward, 7, King's Bench Walk.
 Wheelock, Joseph, 10, Chancery Lane.
 White, John Meadows, 10, Whitehall Place.
 Wilde, Edw. Archer, 21, College Hill, City.
 Wilkinson, William M., 44, Lincoln's Inn Fields.
 Williams, Stephen, 16, Bedford Row.
 Williamson, James, 10, Great James Street, Bedford Row.
 Woodhouse, Henry William, 5, New Square, Lincoln's Inn.
 Wren, Robert, 32, Fenchurch Street.
 Yetts, Joseph Muskett, Temple Chambers, Fleet Street.

COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Appointed under the 16 & 17 Vict. c. 78, with dates when gazetted.

Bridgman, Joseph, Chester. Jan. 6.
 Broad, Joseph, Tunstall.
 Dodd, Grantham Rt., St. Hilier, Jersey.
 Holden, Hyla, Worcester. Jan. 20.
 Hughes, Henry, Maidstone. Jan. 13.
 Mourilyan, Joseph Noakes, Sandwich. Jan. 17.
 Seaton, Matthew Mease, 17, Bond Street, St. Hilier, Jersey.
 Wheeler, Henry, Middleton.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Dec. 27th, 1853, to 20th Jan. 1854, both inclusive, with dates when gazetted.

Bishop, Frederick, and Wykeham Wheeler, Shelton, Attorneys and Solicitors. Jan. 10.
 Burnett, William Hope Whidbey, and Herrmann Lang, 5, Serjeant's Inn, Fleet Street, Solicitors. Jan. 3.
 Deane, Charles, and Arthur Goodrich, 61, Lincoln's Inn Fields, Attorneys and Solicitors. Jan. 20.

Gravener, George Wright, and William Stephen Shoobridge, Dover, Attorneys and Solicitors. Jan. 17.

Hindmarsh, James Illingworth, and Worthington Evans, 7, Crescent, Jewin Street, Cripplegate, Attorneys and Solicitors. Jan. 13.

Lovibond, Benjamin, and John Hawkey Bingham Carslake, Bridgwater, Attorneys. Jan. 3.

Mallaby, Joseph, and Jackson Townsend, Liverpool and Birkenhead, Attorneys and Solicitors. Dec. 27.

Nation, Richard, Richard Stileman, and John Neate, 4A, Orchard Street, Portman Square, Attorneys and Solicitors. Jan. 20.

Ostler, William, John Lely Ostler, and William Cochrane, Grantham, Attorneys and Solicitors (so far as regards the said William Ostler and John Lely Ostler). Jan. 10.

Payne, Richard Ecroyd, Edwin Eddison, Robert Lawson Ford, and William North, Leeds, Attorneys and Solicitors (so far as regards the said William North). Jan. 6.

Peile, Thomas Hanson, Rowland Babington Peile, and William Henry Murch, 4, Mansion House Place, City, Attorneys and Solicitors (so far as regards the said William Henry Murch). Jan. 20.

Ridley, John, and John Porter Dolphin, Newcastle-upon-Tyne and Hexham, Attorneys and Solicitors. Jan. 20.

Stares, George Henry, and Benjamin Bradley Hewitt, Bishop's Waltham, Attorneys and Solicitors. Jan. 13.

Tilson, Thomas, William Clarke, and David Simpson Morice, 29, Coleman Street, City, Attorneys and Solicitors (so far as regards the said Thomas Tilson). Jan. 3.

JOINT-STOCK TRUST COMPANIES.

A DEPUTATION from the Council of the Incorporated Law Society waited upon the Lord Chancellor last Wednesday, on the subject of allowing public companies to administer private trusts. The question is one of great importance—introducing a totally new description of administration of property; one of the proposals being that the South Sea Company should be empowered to take upon itself in a corporate capacity and be entitled to charge a profit for the performance of duties which at present devolve upon unpaid trustees.

The deputation submitted to his Lordship the following objections:—The powers relating to private trusts now sought to be conferred on the South Sea Company are entirely inconsistent with its original nature and constitution. That trusts are, in the majority of cases, carried into effect by the trustees personally, and without expense. They are almost invariably selected in consequence of their connexion with *certain que trusts*, and their knowledge of the circumstances and conditions of the trust property, and are therefore enabled to perform their duties without any formal investigation into facts and circumstances absolutely necessary to

enable strangers to carry trusts into effect. The trusts, powers, and discretion with which trustees are invested are such as, in a great majority of cases, could not be advantageously exercised, and in many cases could not be at all exercised by a public company.

If joint-stock companies for the administration of trusts should be deemed beneficial to the public, it was suggested that the plan should be carried into effect by a public Act, of which due notice should be given, and which would enable the public to express their opinion upon the propriety of such a measure.

With respect to the bill of the Executor and Trustee Society, it was open to all the same objections as that of the South Sea Company, and it proposed to take powers to charge commission to any amount upon all estates or funds committed to their management, besides costs, charges, and expenses.

The Lord Chancellor, having put various questions to the deputation, with a view of eliciting the nature of their objections to the proposed bills, stated that the subject was one of great importance, and that it would not fail to receive his attentive consideration.

NOTES OF THE WEEK.

REGISTRATION OF TITLE COMMISSION.

THE Queen has been pleased to appoint the Right Hon. Spencer Horatio Walpole; the Right Hon. Joseph Napier; Sir Alexander James Edmund Cockburn, Knight, her Majesty's Attorney-General; Sir Richard Bethell, Knight, her Majesty's Solicitor-General; Thos. Emerson Headlam, Esq., one of her Majesty's Counsel; Vincent Scully, Esq., one of her Majesty's Counsel; Robert Lowe, Esq., Barrister-at-Law; William David Lewis, Esq., Barrister-at-Law; Henry Drummond, Esq.; John Evelyn Denison, Esq.; Robert Wilson, Esq., and William Strickland Cookson, Esq., to be her Majesty's Commissioners for considering the subject of the registration of title with reference to the sale and transfer of land.—From the *London Gazette* of 20th Jan.

EXCHEQUER OF PLEAS.

In future, on Special Paper days, if the cases in the Special Paper do not occupy the whole of the day, the Court will proceed with the New Trial Paper.

ADMISSION OF SOLICITORS IN CHANCERY.

The Master of the Rolls has appointed Tuesday the 31st of January instant, at the Rolls Court, Chancery Lane, at four in the afternoon, for swearing Solicitors.

Every person desirous of being sworn on the above day must leave his Common Law Admission or his Certificate of Practice for the current year at the Secretary's Office, Rolls Yard, Chancery Lane, on or before Monday, the 30th inst.

¹ Mr. Cookson and Mr. Wilson are Solicitors.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

Whitbread v. Smith and another. Jan. 17, 18, 1854.

(Coram Lord Chancellor and Lords Justices.)

EQUITY OF REDEMPTION ON MORTGAGE UNDER DEED OF APPOINTMENT.—RIGHT TO REDEEM.

Freehold property was limited to such uses as R. and his wife should jointly appoint, and in default of such appointment to himself for life, with remainder to his wife for life, with remainder to their son, his heirs and assigns, for ever. After several mesne mortgages, R. and his wife jointly appointed by mortgage in May, 1832, with a proviso for re-conveyance on re-payment, unto and to the use of himself and his wife, their heirs or assigns, or unto such person or persons as they should direct. On the death of the wife and R., held, allowing an appeal, without costs, from Vice-Chancellor Kindersley, that the assignees of the son were entitled to redeem as against the defendants who claimed under the deed of May, 1832.

CERTAIN freehold property in Monmouthshire was limited by a disentailing deed of June, 1815, and deed of appointment in July, 1817, to such uses as Mr. William Rees and his wife should jointly appoint, and in default of appointment to himself for life, with remainder to his wife for life, with remainder to their son, his heirs and assigns for ever. It appeared that Mr. Rees and his wife appointed by way of mortgage for a term of 700 years to secure a sum of 250*l.*, with a proviso for cesser of the term and reconveyance to the former uses on repayment, and in May, 1832, after several mesne mortgages, they appointed by mortgage with a power of sale, but with a proviso for re-conveyance on repayment unto and to the use of himself and his wife, their heirs or assigns, or unto such person or persons as they should direct. After the wife's death in 1841, Mr. Rees mortgaged the equity of redemption to Mr. Martin, with a proviso for re-conveyance to himself, his heirs or assigns, or as he or they should direct, and it was in 1845 conveyed to Mr. Thomas Williams, who devised to the defendants. The son, in April, 1850, and after the father's death in 1849, assigned by deed all his interest to a trustee for the plaintiff and his wife, who was his sister, and they filed this bill claiming to redeem, and for an account of the profits. The Vice-Chancellor *Kindersley* having dismissed the bill, with costs, on the ground that the deed of May, 1832, by reserving the equity of redemption to Mr. Rees and his wife in fee operated as an absolute appointment, and defeated the son's estate (reported 1 *Drewry*, 531), this appeal was presented.

Glassey and Whitbread in support; *Campbell* and *R. Hawkins*, contra.

The Court said, that the deed of July, 1817, preserved the ultimate rights of the son under whom the plaintiffs claimed, and that they were entitled to redeem. The appeal was accordingly allowed, but without costs.

Lord Chancellor.

In re Tillie and Henderson's Patent. Jan. 20, 1854.

PETITION TO SEAL PATENT. — EXPIRATION OF PROVISIONAL PROTECTION. — CAVEAT.

Where a caveat had been lodged against a patent being granted, only just before the expiration of the provisional protection for six months, under the 15 & 16 Vict. c. 83, s. 7, the petition to seal the patent was allowed to stand over, in order to obtain affidavits from Ireland and Scotland—although the six months had expired: there being no culpable neglect.

THIS was an application for an order to allow this petition to seal a patent, to stand over until the next petition-day, for the purpose of obtaining certain affidavits from Ireland and Scotland.

Baggallay, in support.

Hindmarsh, contra, on the ground the six months' provisional protection under s. 7, of the 15 & 16 Vict. c. 83, had expired on Oct. 25 last.

The Lord Chancellor said, that as the other side had lodged their caveat just before the six months' required, and the Act was only applicable to cases of culpable neglect, the application would be granted.¹

Lords Justices.

Anon. Jan. 20, 1854.

SOLICITOR OPPOSING PETITION IN ABSENCE OF COUNSEL.

The solicitor was allowed to address the Court in opposition to a petition, where the counsel instructed was unavoidably absent.

ON the hearing of a petition, it appeared that the counsel, who had been instructed to oppose, was unavoidably absent.

The Lords Justices allowed the solicitor to address the Court in his stead.

¹ Sect. 20 enacts, that "no letters patent" "shall be issued or be of any force or effect unless the same be granted during the continuance of the provisional protection under this Act," "save that where the application to seal such letters patent has been made during the continuance of such provisional or other protection as aforesaid, and the sealing of such letters patent has been delayed by reason of a caveat or an application to the Lord Chancellor against or in relation to the sealing of such letters patent, that such letters patent may be sealed at such time as the Lord Chancellor shall direct."

In re Pike, ex parte Pike. Jan. 20, 1854.

BANKRUPT. — THIRD-CLASS CERTIFICATE FOR IMPROPER CONDUCT, &c. — SUSPENSION.

Where a bankrupt had given a cheque for 70l. on his bankers, when his account was overdrawn to the extent of 800l., and had also obtained two oxen from another creditor on an understanding for immediate payment and failed to pay, and had likewise set up his son in business as a butcher soon after the adjudication, whereby the sale of the goodwill of his own business was injured: Held, on appeal from Mr. Commissioner Bere, that his certificate was properly of the third-class, but by consent of the assignees its suspension was varied from 18 to 12 months.

THIS was an appeal from Mr. Commissioner Bere suspending this bankrupt's certificate of the third-class for 18 months, without protection (see report on another point, *ante*, p. 184). It appeared that the opposition was on behalf of a creditor to whom he had given a cheque for 70l. on his bankers when his account was overdrawn to the amount of 800l., and by another creditor from whom he had obtained two oxen on the understanding they were to be paid for immediately, but he had not made the payment, and also that the bankrupt, who was a butcher at Stonehouse, near Plymouth, had set up his son in business near his own shop soon after the adjudication, whereby the sale of the goodwill had been injured. It further appeared that his family expenditure considerably exceeded the bankrupt's profits.

Bacon and Messiter in support; *Swanston and Baggallay*, for the assignees, *contra*, were not called on.

The *Lords Justices* said, that the bankrupt's conduct was sufficient to warrant the judgment of the Commissioner, but if the assignees consented, protection might be granted at the end of 12 months. As to the class of the certificate, this could not be interfered with except on strong grounds, and in the present case it did not appear the bankruptcy arose from unavoidable losses.

Thornton v. Court. Jan. 23, 1854.

BILL TO OBTAIN BENEFIT OF COVENANT FOR QUIET ENJOYMENT.—COSTS OF ACTION AT LAW AND IN EQUITY.

The plaintiff, who had been evicted, brought an action at law on the covenant for quiet enjoyment in the purchase deed, but failed, by reason of the defendant pleading a mortgage from the plaintiff to B., whereby the legal estate was conveyed. The defendant afterwards paid off the mortgage, and the plaintiff filed a bill to obtain the benefit of the covenant, and on appeal from the Master of the Rolls an action was directed and the defendant was restrained from setting up the mortgage. The plaintiff ob-

tained a verdict. On further directions and costs, held, that the defendant was liable to the costs both at law and in equity — no costs to be allowed of the appeal.

THE plaintiff had purchased from the defendant certain freehold property in Cheshire, under a conveyance containing a covenant for quiet enjoyment, but none for title, and he subsequently mortgaged the same to Mr. Bolshaw. It appeared that the plaintiff was ejected at the suit of Lord Delamere, in 1846, whereupon he brought an action at law against the defendant for damages on the breach of covenant, but failed on the defendant pleading the conveyance of the legal estate under the mortgage-deed. The defendant then paid off the mortgage-debt and obtained delivery to himself of the mortgage-deed; and in Michaelmas, 1851, the plaintiff filed this bill to obtain the benefit of his covenant, and for compensation, after deducting the mortgage-debt paid by the defendant. The Master of the Rolls had dismissed the bill, but on appeal to this Court, leave was given to the plaintiff to bring an action at law on the covenant, and the defendant was restrained from setting up the mortgage-deed. The plaintiff had obtained a verdict, and the amount due after the deduction of the mortgage-debt was 32l. odd. The case now came on upon the question of costs.

R. Palmer and J. Nicholson for the plaintiff; *Lloyd and Beavan* for the defendant.

The *Lords Justices* said, that as the suit in equity was occasioned by the improper act of the defendant in setting up the mortgage at law, and he was also sued for the breach of covenant, he must pay the costs both in equity and at law, but there would be no costs of the appeal.

Master of the Rolls.

Stainton and another v. Carron Iron Company.
Nov. 12, 1853; Jan. 17, 1854.

BILL BY RESIDUARY LEGATEES TO RECOVER DEBT TO TESTATOR'S ESTATE.—EXECUTORS.—DEMURRER FOR WANT OF EQUITY.

A demurrer for want of equity was allowed to a bill by residuary legatees to recover a claim for the testator's estate; and held that the executors were the proper parties to bring such suit.

THIS was a suit by the residuary legatees of a testator to recover from the defendants the sum of about 4,000l. for commission which they had agreed to pay him as their London agent, and to restrain certain proceedings in Scotland by the defendants in respect of a claim against the testator. There was a demurrer on the ground the executors and trustees, and not the plaintiffs, were the proper parties to sue.

Willcock and Cotton, for the defendants, in support; *R. Palmer and Kenyon* for the plaintiffs, *contra*.

Cur. ad. vult.

The Master of the Rolls said, there was no doubt the suit should have been instituted by the executors, as however much the plaintiffs might be benefited by obtaining a decree their relief would only be consequential to that of the executors. It was a fixed principle, with which nothing but very special circumstances could interfere—such as the executors' incompetency or neglect to protect their testator's property—that executors were the proper parties to institute proceedings like the present. And as there was no evidence of such incompetency or neglect in the present case, but on the contrary they had instituted a suit to administer the estate, the demurrer must be allowed.

Jacobs v. Rickards. Jan. 17, 1854.

FORECLOSURE SUIT.—WHERE LUNATIC MORTGAGOR.—SUSPENSION OF DECREE FOR SIX MONTHS.

After a mortgage had been executed, the mortgagor was found lunatic by commission extending to several years previous to the mortgage. The mortgagor had no notice of the lunacy: Held, that as the lunatic's personal representatives had omitted to cross-examine the attesting witness as to due execution of the deed and had not instituted proceedings to set aside the deed, the mortgagee was entitled to a foreclosure decree, but to be suspended for six months, in order to enable the defendants to adopt such proceedings as they might be advised.

It appeared that a mortgage for 1,500*l.* was executed in Dec, 1848, and that the mortgagor was, in 1852, found by commission incapable of managing his affairs since the year 1825. On this suit by the mortgagee to foreclose against the mortgagor's legal personal representatives,

R. Palmer and Kinglake appeared in support; *Roupeil, Karlake, and Coleridge*, contra.

The Master of the Rolls said, that as the plaintiff had advanced the money without notice of the mortgagor being incompetent to execute the mortgage deed, and the defendants had not examined the attesting witness to show that there was no real execution at the time, nor instituted proceedings to set it aside, he was entitled to a decree, which would, however, be suspended for six months to enable the defendants to adopt such proceedings as they might be advised—with liberty to either party to apply.

Eason v. Nalder and others. Jan. 23, 1854.

SPECIFIC PERFORMANCE OF AGREEMENT FOR RENEWAL OF LEASE.—RESTRICTIONS OF FORMER LEASE.—COSTS.

*On an agreement being entered into for the renewal to the plaintiff by the defendants of the lease of a public-house, which he held as assignee, at an increased rent and on payment of 600*l.* premium, it appeared that*

nothing was said as to the restriction contained in the former lease against the sale of any ale or beer other than the defendants': Held, that the plaintiff was only entitled to a specific performance with such a restriction, and that he must pay the costs.

THIS was a claim for the specific performance of a contract for the renewal of a lease for 25 years of a public-house in Westminster, the property of the defendants, who were brewers at Croydon. It appeared that the plaintiff was in possession as assignee of a lease, containing a restriction for the sale of the defendants' beer or ale exclusively on the premises, and that he had agreed for the renewal of the lease for 25 years at an increased rent of 20*l.* per annum, on payment of 600*l.*, but nothing was said about the restriction on the sale of beer and ale. The defendants' solicitors had forwarded the draft lease containing the restriction, but the plaintiff's solicitor had struck it out, whereupon the defendants refused to complete.

R. Palmer and Bilton for the plaintiff; *Glasse, Selwyn, and Tindall* for the defendants.

The Master of the Rolls said, that the parties, upon entering into negotiations, clearly intended the lease should be renewed on the old terms, and the defendants were entitled to have the restrictive clause inserted. There would therefore be a specific performance decreed,—the costs to be paid by the plaintiff.

Vice-Chancellor Kindersley.

Grant v. Winbolt. Jan. 17, 1854.

WILL.—PURCHASE OF ANNUITY FOR "LIFE" OF TWO SISTERS "TO BE EQUALLY DIVIDED BETWEEN THEM."

A testator directed an annuity to be purchased out of his residue for "the life" of his two sisters "to be equally divided between them:" Held, on construction of the will, that the annuity was for the joint lives only of the sisters.

In this case a question arose as to the construction of a clause in a testator's will whereby he desired, out of the remainder of his property not already bequeathed, an annuity of 55*l.* sterling should be purchased for "the life" of his two sisters, "to be equally divided between them."

Baily for the residuary legatees; *Toller* for the two sisters.

The Vice-Chancellor said, that although the testator's intention might have been to allow the survivor to have the annuity, it was impossible, without putting in some words, to arrive at that conclusion from the will, and the annuity must therefore be declared to be a gift during the joint lives only of the sisters.

Vice-Chancellor Stuart.

Whitlow v. Dillwarth. Jan. 16, 1854.

PAYMENT OF FUND TO MARRIED WOMAN, WHERE SEPARATED, AND HUSBAND CANNOT BE FOUND.

Order on petition of married woman by her

next friend, for the sale and payment to her, on her receipt, of a fund standing to the account of her husband and herself in an administration suit, to which she was entitled when she was separated from her husband in 1839, and he could not now be found to be served with the petition.

Rosburgh appeared in support of this petition, which was presented by a married woman by her next friend for the sale and payment to her, on her receipt, of a fund standing to the account of her husband and herself in this administration suit, and to which she was entitled under the will of Mr. Whitlow. It appeared that the petitioner was separated in 1839 from her husband, and that he could not be found in order to be served with this petition.

The Vice-Chancellor made the order as prayed.

McCormick v. Garnett. Jan. 18, 1854.

MARRIED WOMAN.—EQUITY TO SETTLEMENT OF LEGACY.—EXECUTORS' RIGHT OF SET-OFF.—HUSBAND'S ASSIGNEE.

The husband of a married woman, who was entitled to a legacy of 500*l.*, had assigned the same to a purchaser, and he was at the time of the testator's death indebted to his estate in 200*l.*: Held, that 250*l.* must be settled on the wife and her children, and that the executors were entitled to set-off their testator's claim against the other half, and that the balance was payable to the husband or his assignee.

THE testator, by his will, gave a sum of 500*l.* to Mrs. Macdonald, and it appeared that her husband, who was at the time of the testator's decease indebted to him in a sum of 200*l.*, had assigned the legacy to a purchaser.

Glasse and Cairns for the plaintiff, the residuary legatee; Bacon and Fielding Nalder for the executors.

Craig, for the legatee and her husband and his assignee, cited *Ex parte O'Ferrall*, 1 Glyn & Jam. 347; *Carr v. Taylor*, 10 Ves. 574; *Freeman v. Lomas*, 9 Hare, 109.

The Vice-Chancellor said, that the legatee's equity to a settlement was paramount to the executors' right of set-off and the assignee's right to the legacy, and that therefore one-half must be settled on her and her children, and the debt of 200*l.* be set-off against the other moiety, and the balance be paid to the husband or his assignee.

In re Clossy. Jan. 20, 1854.

LEASE FOR LIVES.—PRODUCTION OF LESSEES TO PURCHASER, UNDER 6 ANNE, C. 18, S. 1.

Order as in *In re Linggen*, 12 Sim. 104, to compel the production, under the 6 Anne, c. 18, s. 1, of the parties, or any one or more of them, named in a lease for three lives, by the person claiming to receive the rent of a

house, purchased by the applicant subject to such lease, to two gentlemen named, on 10 days' service of the order.

THIS was an application *ex parte* under the 6 Anne, c. 18, s. 1,¹ for an order on Mr. Wm. Byrne, who claimed to receive the rent of a house at Parkgate, Cheshire, which was purchased by a Mr. Johnson of Liverpool, subject to a lease for three lives, dated in 1791, to produce and show at the door of the parish church of St. Peter, Liverpool, between the hours of 11 and 1 o'clock, on February 1 next, the parties named in such lease, or any one or more of them, to the two gentlemen mentioned, upon service of the order 10 clear days previously.

Cairns, in support, cited *In re Linggen*, 12 Sim. 104.

The Vice-Chancellor made the order in the terms set out in the case cited.

¹ Which enacts, that "any person or persons who hath or shall have any claim or demand in or to any remainder, reversion, or expectancy, in or to any estate, after the death of any person within age, married woman, or any other person whatsoever, upon affidavit made in the High Court of Chancery, by the persons so claiming such estate, of his or her title, and that he or she hath cause to believe that such minor, married woman, or other person is dead, and that his or her death is concealed by such guardian, trustee, husband, or any other person, shall and may, once a year, if the person aggrieved shall think fit, move the Lord Chancellor," &c., "to order such guardian, trustee, husband, or other person, concealing or suspected to conceal such person, at such time and place as the said Court shall direct, on personal or other due service of such order, to produce and show to such person and persons, (not exceeding two) as shall in such order be named by the party or parties prosecuting such order, such minor, married woman, or other persons aforesaid; and, if such guardian, trustee, husband, or such other person, as aforesaid, shall refuse or neglect to produce or show such infant, married woman, or such other person, on whose life any such estate doth depend, according to the directions of the said order, that then the Court of Chancery is hereby authorised and required to order such guardian, trustee, husband, or other person, to produce such minor, married woman, or other person concealed, in the said Court of Chancery, or otherwise before Commissioners to be appointed by the said Court, at such time and place as the Court shall direct, two of which Commissioners shall be nominated by the party or parties prosecuting such order, at his, her, or their costs and charges; and in case such guardian, trustee, husband, or other person, shall refuse or neglect to produce such infant, married woman, or other person, so concealed, in the Court of Chancery, or before such Commissioners, whereof return shall be made by such Commissioners, and that return filed in the Petty Bag Office, in either or any

Dimes v. Steinberg. Jan. 20, 1854.

BILL CHARGING FRAUD AGAINST LEGATEE UNDER WILL ALLEGED TO BE FRAUDULENTLY OBTAINED.—DEMURRER FOR WANT OF EQUITY.

The bill filed for the administration of the estate of a testator by his brother and next of kin, alleged that he was a lunatic and had been fraudulently induced to execute a will, under which the defendant S. was a legatee: Held, that as S. was charged with having acted as confederated agent of the persons procuring the execution of the will, his demurrer for want of equity must be overruled, but without costs.

Held also, that the statements in the bill, for the purposes of the demurrer, must be taken to be true.

THIS bill was filed by the next of kin and brother of Mr. Thomas Dimes, for the administration of his estate and for the appointment of a receiver, and alleged that Mr. Dimes was a lunatic, and that he had been fraudulently induced to execute a will, under which the defendant, Mr. Steinberg, was a legatee, who was also charged as having acted as confederated agent of the persons procuring the execution of the will. Proceedings had been instituted to obtain the recall of the probate, which had been granted to the executors.

Willcock and *F. J. White* now appeared for Mr. Steinberg, in support of a demurrer for want of equity; *Daniel* and *C. H. Keene* for the executors; *W. M. James* and *W. D. Lewis* for the plaintiff.

The Vice-Chancellor said, that for the purposes of the demurrer the allegations in the bill, although neither precise nor concise, must be taken to be true, and the demurrer must therefore be overruled, but without costs.

Vice-Chancellor Wood.

James v. Rice. Jan. 12, 16, 1854.

EQUITABLE DEPOSIT OF DEEDS AS COLLATERAL SECURITY FOR REPAYMENT OF PROMISSORY NOTES.—STATUTES OF USURY.—TAKING BILL PRO CONFESSO.

A motion was refused, without costs, to take pro confesso, on the defendant having left his home and his residence not being known, a bill filed for an account of what was due to the plaintiff on two promissory notes at 6 per cent. given by the defendant

to secure an advance, where title-deeds to freehold property had been deposited by way of collateral security, and a sale or foreclosure was asked in default of payment, and the bill was also dismissed.

Semble, that effect could not be given to the deposit of the deeds under the Statutes of Usury.

THIS bill was filed for an account of what was due to the plaintiff in respect of two promissory notes, payable on demand, to secure an advance of 150*l.* at 6 per cent. to the defendant, who also it appeared deposited certain title-deeds relating to freehold property, and on nonpayment of the notes had agreed to execute a mortgage thereon for the amount. A sale or foreclosure was also sought in default of payment.

J. V. Prior now moved to take the bill pro confesso, the defendant having left his house in October, 1852, and his present residence being unknown, and contended the possession of the deeds was by way of collateral security, and did not affect the debt on the promissory notes.

Cur. ad. vult.

The Vice-Chancellor, after referring to the 12 Anne, st. 2, c. 16; 3 & 4 Wm. 4, c. 98; 7 Wm. 4 and 1 Vict. c. 80; 2 & 3 Vict. c. 37; and to *Doe d. Haughton v. King*, 11 M. & W. 333; *Nixon v. Phillips*, 7 Exch. R. 188; and *Lane v. Horlock*, 1 Drewry, 587, said, that as effect could not be given to the deposit of the deeds by way of contract for securing the payment of the promissory notes, the motion must be refused, and the bill would be dismissed, but without costs.

Riggall v. Foster and others. Jan. 23, 1854.

INJUNCTION TO RESTRAIN MORTGAGE AND ALLEGED BREACH OF TRUST.—DISSOLVING BEFORE HEARING.—COSTS.

A motion was refused, with costs, to dissolve before the hearing an injunction restraining the defendants from mortgaging or otherwise charging certain trust property for the purpose of securing debts, where it was alleged the object of the trust would be defeated by the mortgage.

Daniel and *C. T. Simpson* appeared in support of this motion to dissolve an injunction restraining the defendants from mortgaging or otherwise charging a plot of ground and chapel at Ludborough, Lincolnshire, for the purpose of securing certain debts.

Rolt and *W. Hislop Clarke*, contra.

The Vice-Chancellor said, that although trustees were entitled to mortgage the trust property to enable them more effectually to execute the trusts, yet as the injunction had been granted to prevent a mortgage whereby, it was alleged, the objects of the trusts would be defeated, the injunction could not be dissolved before the hearing, and the motion would therefore be refused, with costs.

of the said cases, the said minor, married woman, or such other person so concealed, shall be taken to be dead, and it shall be lawful for any person claiming any right, title, or interest in remainder or reversion, or otherwise, after the death of such infant, married woman, or such other persons so concealed, as aforesaid, to enter upon such lands, tenements, and hereditaments, as if such infant, married woman, or other person so concealed, were actually dead."

Court of Queen's Bench.

Mowatt v. Lord Londesborough. Jan. 13, 1854.

ABORTIVE RAILWAY SCHEME. — ACTION AGAINST DIRECTOR FOR DEPOSIT. — UNDERTAKING.

The plaintiff subscribed to a railway scheme in consequence of an advertisement, in which the directors undertook to return the deposits without deduction on the bill not passing: Held, that the plaintiff was entitled to recover the amount of his deposits with interest thereon from the time the same became payable, from a director, notwithstanding he had signed the deed of settlement, which did not contain such an undertaking.

THIS was a rule nisi to set aside the verdict for the plaintiff, and to enter it for the defendant in this action, which was brought against a director of the Deal and Dover Railway Company, to recover the amount of deposits paid by the plaintiff on shares in the company. It appeared that the directors in the advertisement, undertook to return the whole of the deposits to the subscribers without deductions on the bill not passing through Parliament, but that they had deducted the preliminary expenses on the scheme proving abortive. The deed of settlement, which the plaintiff had executed, vested the amount subscribed in trustees, to be employed by the directors in carrying the scheme into effect. On the trial before *Campbell, C. J.*, the plaintiff obtained a verdict.

Attorney-General, M. Chambers, and *Willes* showed cause against the rule, which was supported by *Byles, S. L., Bramwell*, and *Honyman*.

Cur. ad. vult.

The Court said, the plaintiff had made out a *prima facie* case, as there was the express undertaking of the directors to return the whole of the deposits without deduction on the bill not being obtained, and if it had not been for this undertaking, some expenses, which were incurred in introducing the bill might have been deducted, under the deed of settlement, and the objection as to the want of a stamp on the letter of allotment must be overruled, in accordance with *Ward v. Lord Londesborough*, 12 C. B. 252. And as the plaintiff's money had not been repaid when he was entitled thereto interest must be paid thereon. The rule would therefore be discharged.

Regina v. Justices of Flintshire. Nov. 21, 1853; Jan. 13, 1854.

COSTS OF INDICTMENT FOR NON-REPAIR OF HIGHWAY. — PAYMENT OUT OF HIGHWAY RATE. — SURVEYORS' LIABILITY ON NOT MAKING RATE.

A rule nisi was discharged for the issue of a warrant of distress, under the 5 & 6 Wm. 4, c. 50, s. 103, for highway rates, on the

goods of two surveyors of a highway in a parish, the inhabitants of which had been indicted for its non-repair, and the costs had been ordered to be paid out of the rate, where such surveyors had made no rule to meet such costs.

THIS was a rule nisi on the defendants to issue a warrant of distress for highway rates on the goods of two surveyors of the highway in the parish of Trydden. It appeared that the parishioners had been indicted for non-repair of a highway, and the costs were ordered to be paid out of the highway rate, but that the surveyors, now sought to be made liable, had made no rate on the ground of the parishioners objecting, and that they had been appointed after the order in question was made, and had no funds in hand.

By the 5 & 6 Wm. 4, c. 50, s. 103, it is enacted, that "all penalties and forfeitures by this Act inflicted or authorised to be imposed for any offence against the same, and all balances due from a surveyor, and all costs and charges to be allowed and ordered by the authority of this Act (the manner of levying, recovering, and applying of which is not hereby otherwise particularly directed), shall, upon proof and conviction of the offences respectively before any two or more justices," &c., "be levied, together with the costs attending the information, summons, and conviction, by distress and sale of the goods and chattels of the offender or person liable or ordered to pay the same respectively, by warrant under the hands of two or more justices before whom the party may have been convicted (which warrant such justices are hereby empowered and required to grant)."

V. Williams showed cause against the rule, which was supported by *Pashley* and *Beavan*.

Cur. ad. vult.

The Court said, the rule must be discharged.

Dean v. Horncliffe. Jan. 17, 1854.

MARINE TIME INSURANCE. — CAPTURE BY PIRATES. — TOTAL LOSS. — NOTICE.

Where a vessel was captured by pirates, and, although afterwards retaken by a ship of war, had never been restored to the owner, but was abandoned and subsequently sold: Held, that the owner was entitled to recover on a time policy as for a total loss, on notice as soon as he became aware of the circumstances to the underwriters, and notwithstanding the notice was given after the expiration of the policy.

THIS was an action as for a total loss of a vessel on a time policy effected from April 22, 1851, to April 21, 1852. It appeared that the vessel left on her homeward voyage from Valparaiso to Liverpool on November 7, and was on December 1, 1851, captured by pirates in a port in the Magellan Straits, into which she had put to repair, but that she had been retaken, on the 28th January following, by her

Majesty's ship *Virago*, and, after having been taken to Valparaiso, was sent in charge of two officers of the *Virago* to this country to be adjudicated on in the Court of Admiralty. The vessel had, however, upon damages having been sustained during the voyage, put into Monte Video to repair, and sailed again on June 25, but was forced to put into the port of Faya for repairs and was there abandoned as unfit for repair and sold. The plaintiff, on receiving this intelligence, claimed, on April 30, 1852, from the defendants as for a total loss on the seizure by the pirates. It appeared also that the purchaser had repaired and brought the vessel to England. The action now came on in the form of a special case for the opinion of this Court, as to whether the plaintiff was entitled to claim for a total or for a partial loss.

J. Wilde for the plaintiff; *Cowling*, for the defendants, referred to the 13 & 14 Vict. c. 26, s. 5,¹ and cited *Holdsworth v. Wise*, 7 B. & C. 764; *Perry v. Aberdeen*, 9 B. & C. 411.

The Court said, that the principle laid down was, that where a total loss by capture had taken place, the underwriters were liable as for a total loss, unless the owner had the property restored to him or the means of obtaining it. In the present case, by the sequence of events over which the plaintiff had no control, he had *de facto* lost his property, and the notice was given as soon as he was aware of the circumstances, and he was therefore entitled to recover as for a total loss, which had accrued on the vessel being taken by pirates.

Court of Common Pleas.

Noble v. Chapman. Jan. 11, 1854.

COMMON LAW PROCEDURE ACT.—AMENDMENT OF VARIANCE IN DECLARATION.—PRACTICE.

Held, that the application under the 15 & 16 Vict. c. 76, s. 222, to amend a variance in a declaration should be made at Chambers, and not in Court.

THIS was an application under the 15 & 16 Vict. c. 76, s. 222,² to amend the declaration in this action on a judgment, which was stated

¹ Which enacts, that property of her Majesty's subjects found in possession of pirates, shall be restored on payment of one-eighth of its value.

² Which enacts, that "it shall be lawful for the Superior Courts of Common Law, and every Judge thereof, and any Judge sitting at Nisi Prius, at all times to amend all defects and errors in any proceeding in civil causes, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend, or not; and all such amendments may be made with or without costs, and upon such terms as to the Court or Judge may seem fit; and all such amendments as may be necessary for the pur-

pose of having been recovered on a day other than as appeared by the record on its production at the trial upon the plea of *nul tiel record*.

Mitward in support.

The Court said, that the application should have been made at Chambers, but that the application would be granted in the present case.

Morgan and another v. Pike. Jan. 20, 1854.
ACTION ON COVENANT IN MORTGAGE-DEED ON DEFAULT IN PAYING INSTALMENT.—STAMP.—AMENDMENT.—CROSS-COVENANTS.

*A mortgage-deed contained a covenant by the defendant to refund a sum of 1,800*l.* stock, borrowed from the plaintiffs, by yearly instalments of 300*l.* each, with a proviso that in case of default in payment of any instalment, the defendant should be liable to refund the whole amount. Default was made in one instalment, whereupon an action was brought: Held, that the deed was sufficiently stamped with a 4*s.* stamp, that the Judge presiding at the trial had properly allowed the declaration to be restored to its original form, although it had been amended so as to cover interest, and that the plaintiff could recover, notwithstanding there were cross-covenants by himself and he had not executed the deed.*

THIS was a motion for a rule nisi for a new trial of this action, which was brought on a covenant in a mortgage-deed dated in June, 1852, whereby the defendant covenanted to refund to the plaintiffs a sum of 1,800*l.* stock borrowed, by yearly instalments of 300*l.*, and providing that in default being made in the payment of any instalment, the whole covenant should come into operation, and the defendant be liable to re-invest the whole amount borrowed. Default was made in paying one instalment. On the trial before *Talfourd, J.*, at the last Sittings in Middlesex, it appeared that the plaintiffs were allowed to amend their declaration in order to cover interest, but afterwards it was re-amended to its original form, and that on an objection being taken to the sufficiency of the stamp (4*s.*) to the deed, the hearing was adjourned to the following day, when the deed was produced with the pink stamp, under s. 14 of the 13 & 14 Vict. c. 97, of the Inland Revenue Commissioners of the sufficiency of the stamp, and the deed was thereupon admitted, and the plaintiffs obtained a verdict.

Ogle, for the defendant, in support, on the ground the second amendment was wrong, and that the stamp was insufficient, the sum secured being indefinite, and also that the action could not be maintained as there were cross-covenants by the mortgagee who had not executed the deed.

The Court said, that under the 13 & 14 Vict.

pose of determining in the existing suit the real question in controversy between the parties shall be so made."

c. 97, as much might be recovered on a deed as the stamp was sufficient to cover, and in the present case the deed was sufficiently stamped for 1,800*l.*, which was the sum recovered. The other grounds of objection were not tenable, and the rule must be refused.

Court of Exchequer.

Clossman v. Lacoste. Jan. 17, 1854.

ACTION BY COMMISSION AGENT TO RECOVER SALARY ON DISMISSAL.—SERVICES RENDERED.—NEW TRIAL.

*The defendant agreed to pay the plaintiff a yearly salary of 600*l.* for five years, with a commission agreed on, on his exerting his best ability, talent, and zeal for the sale of the defendant's wine. The defendant, after paying two years' salary, refused to pay the third year on the ground no result had been obtained from his services. In an action for such year's salary, the plaintiff obtained a verdict for one quarter only: A rule was made absolute on his motion for a new trial.*

THIS was an action to recover 600*l.*, the amount of one year's salary, under an agreement entered into by the defendant to pay that amount yearly for five years, together with a commission as agreed on, on the plaintiff exerting his best ability, talent, and zeal for the sale of the defendant's wine in England, Scotland, and Wales. It appeared that the defendant, after having paid the salary for two years, refused to pay it for the third year on the ground that nothing had resulted from the plaintiff's exertions. On the trial, the verdict passed for the plaintiff for 150*l.*, one quarter's salary, whereupon this rule had been obtained for a new trial.

Bovil showed cause against the rule; *Bramwell* in support.

The Court said, the rule must be made absolute.

Jansens v. Grove. Jan. 23, 1854.

COUNTY COURT.—NO APPEAL IN CASE ABOVE 50*l.* SUBMITTED BY CONSENT UNDER 13 & 14 VICT. C. 61, s. 17.

*An appeal was dismissed, without costs, from the decision of a County Court Judge in a case submitted to him under the 13 & 14 Vict. c. 61, s. 17, by the consent of both parties, where the subject-matter exceeded 50*l.**

THIS was an appeal from the decision of a County Court Judge in a plaint where the subject-matter exceeded 50*l.* An objection was taken on behalf of the respondent, that as the hearing of the case was by consent, the Judge was merely arbitrator, and there was no appeal.

By the 13 & 14 Vict. c. 61, s. 14, the right of appeal is given "in any cause of the amount to which jurisdiction is given to the County Courts by this Act;" and by s. 1, the jurisdiction is limited to 50*l.*, except in questions under s. 17, by consent of both parties.

Cur. ad. vult.

The Court said, that the objection must be allowed, and the appeal be dismissed, but without costs.

Court of Criminal Appeal.

Regina v. Reid. Jan. 21, 1854.

MASTER AND SERVANT.—CONVICTION FOR LARCENY.—CONSTRUCTIVE POSSESSION.

R., the servant to N., was sent by him with his cart to bring home coals, when he took out some and left them at another person's house: A conviction was affirmed for larceny.

THIS was a conviction for larceny. It appeared that the prisoner was servant to a Mr. Newton, and had been sent by him with his cart to bring home a quantity of coals, when he took out some of the coals and left them at another person's house. The question was, whether the offence amounted to larceny or embezzlement.

The Court said, the coals were in the constructive possession of the master, to whom the cart belonged, by his order by means of the prisoner, his servant, and that the conviction for larceny was therefore proper: *Spears's case*, 2 East's P. C. 568; 2 Leach, 825; and the conviction would therefore be affirmed.

Regina v. Greenhalgh and another. Jan. 21, 1854.

CONVICTION FOR OBTAINING ORDER FOR PAYMENT OF MONEY BY FALSE PRETENCES FROM TREASURER OF BURIAL CLUB.

*It appeared that it was the duty of the prisoners, the secretary and the collector of a burial club, to report the sum payable on deaths to the treasurer, and that they had reported 50*s.* to be due on the death of a member's child, and had obtained payment of an order for that amount from the treasurer. The child was not that of a member: Held, that they had been rightly convicted of obtaining an order for payment of money by false pretences.*

THIS was an indictment against the secretary and the collector of a burial club at Bolton, for obtaining from the treasurer an order for the payment of 2*l.* 10*s.* by means of false pretences, and also for obtaining 2*l.* 10*s.* from the treasurer by false pretences. It appeared that it was the prisoners' duty to report the sum payable on deaths, and that they had obtained the sum in question on the death of a child of Robert Lord, but who was not a member of the society as they had reported. The prisoners were convicted and sentenced to 18 months' imprisonment, subject to this case.

J. Cross for the prosecution.

The Court said, that the conviction on the count charging the obtaining an order for money under false pretences was right, and it was accordingly affirmed.

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SATURDAY, FEBRUARY 4, 1854.

OPENING OF PARLIAMENT.

HER MAJESTY'S SPEECH.

THE Queen's Speech upon the opening of Parliament is, as might have been anticipated, the subject of varied and conflicting observation in the public journals, as well as in private circles. As an exposition of the intentions of her Majesty's Government, it has produced *at least* the usual amount of satisfaction and disappointment. Which of these adverse sentiments should preponderate upon a candid perusal, we leave to political writers to discuss, and to our readers individually to determine.

It is matter of professional interest, however, to observe, that the question of Legal Reform has not been overlooked in her Majesty's Address to the two Houses of Parliament. The topic is adverted to in terms of congratulation, as regards that which has been effected, and with a distinct recommendation, which may be regarded as a pledge on the part of the Government, to proceed with further amendments. The paragraph of the Royal Speech which refers to this subject is framed in the following concise but comprehensive terms:—

"The recent measures of legal reform have proved highly beneficial, and the success which has attended them may well encourage you to proceed with further amendments. Bills will be submitted to you for transferring from the Ecclesiastical to the Civil Courts the cognizance of testamentary and of matrimonial causes, and for giving increased efficiency to the Superior Courts of Law."

From this paragraph it may be inferred, that whilst her Majesty's advisers recommended to Parliament the favourable consideration of further measures of legal reform, they are themselves prepared to introduce—

1st. A Bill to transfer the Jurisdiction in

Causes Testamentary from the Ecclesiastical to the Civil Courts.

2ndly. A Bill to transfer the Jurisdiction in Causes relating to Marriage and Divorce from the Ecclesiastical to the Civil Courts; and

3rdly. A Bill to give increased efficiency to the Superior Courts of Law.

Ample and favourable opportunities will, no doubt, present themselves for describing and considering the Government measures of legal reform in detail. At present, we can only state generally, that it is understood the testamentary jurisdiction is to be vested in the existing Courts of Equity; whilst, in accordance with the report of the Divorce Commissioners, a new Court, consisting of one of the Judges of the Courts of Equity together with a Common Law Judge and a Judge taken from the Ecclesiastical Courts, is intended to be constituted, for hearing and determining all suits relating to marriage and divorce. The Bill about to be introduced in reference to the jurisdiction of the Common Law Courts, it is believed, is founded upon the second report of the Common Law Commissioners, and involves many important changes in the Law of Evidence and Procedure.

Upon the whole, it may be fairly conceded, that the subjects of legal reform selected by the Government have been judiciously chosen. The utility of the proposed measures can hardly be judged of, however, until the provisions by which the intentions of the framers are intended to be carried out, have been submitted to public consideration.

Her Majesty's Speech also contains the following passages:—

"The Laws relating to the relief of the Poor have of late undergone much salutary amendment, but there is one branch to which I earnestly direct your attention. The Law of

Settlement impedes the freedom of labour; and if this restraint can with safety be relaxed, the workman may be enabled to increase the fruits of his industry, and the interests of capital and labour will be more firmly united.

"Measures will be submitted to you for the amendment of the Laws relating to the Representation of the Commons in Parliament.

"Recent experience has shown that it is necessary to take more effectual precautions against the evils of *Bribery* and of *Corrupt Practices* at Elections. It will also be your duty to consider whether more complete effect may not be given to the principles of the Act of last Session, whereby reforms were made in the representation of the people in Parliament. In recommending this subject to your consideration, my desire is to remove every cause of just complaint, to increase general confidence in the Legislature, and to give additional stability to the settled Institutions of the State."

PROPOSED TRUST MONOPOLY.

OPPOSITION TO THE PENDING BILLS.

THE nature and objects of the Deputation which waited upon the Lord Chancellor, in reference to the pending applications to Parliament, to transfer to trading companies the management of private trusts, and the substance of the objections to the scheme suggested by the Deputation, were concisely stated in our last Number (p. 240).

The prompt and timely measures adopted by the Council of the Incorporated Law Society, to avert the injury about to be inflicted upon the public by this fresh interference with the functions of the Legal Profession, have secured attention to the subject in the highest quarters, and rendered it impossible that the Bills now before Parliament should be regarded only as matter of private concern, without reference to the extensive and important public interests involved. It must not be supposed, however, that all that is necessary has been effected by pointing out the mischievous character of the Bills in question. The battle is yet to be fought. Lord Cranworth has promised to give the subject his attentive consideration, but until an assurance is obtained from his lordship, or some leading member of the administration, that the project is discountenanced by the Government, the Bills of the South Sea Company, and of the Executor and Trustee Society, must be carefully watched, and, if need be, *opposed at every stage*. By the vigilance of the Incorporated Law Society, the South Sea Company was forced, during the last Session of Parliament, to abandon that portion of the Bill which invested the South

Sea Stock holders with power to administer property subject to private trusts, but it is impossible to calculate to what extent this result may have been influenced by the late period of the Session at which the Bill arrived in the House of Lords. The company now return to the charge, fully acquainted with the nature and character of the opposition to be encountered. To support and promote the South Sea Company's Bill, as well as the Bill of the Executor and Trustee Society, it is notorious that a portion of the press has been *conciliated*, members of Parliament enlisted, and the names of certain members of the Government freely mentioned as approving and sanctioning the scheme. The weight of this support will be best tested when the Bills arrive at such a stage that the sense of either branch of the Legislature may be fairly taken, but it would be a grievous, because probably a fatal, error to underrate the efforts that no doubt will be made to pass both Bills.

It has not yet been our fortune to see any attempt made to meet or answer the manifest objections which arise to a joint-stock trading company taking upon itself the administration of trust property of every description, nature, and tenure, but it is insinuated that the opposition to the proposed scheme has its origin in self-interest. Now, it is extremely probable, to say the least, that if no personal interests were affected by the establishment of joint-stock trust companies, the promoters would be permitted to walk over the course, and effect their objects without opposition. The proverb tells us, that "the business of everybody is that of nobody," and it may be, if no individual apprehended loss, that the schemes now propounded with so much confidence and pretension, would be as successful as many others that in operation have turned out so mischievously for the community. It is not sought or desired to conceal the fact, that the interests of the Legal Profession would be materially affected by the existence of such a monopoly as that which it is now proposed to establish with the assistance of the Legislature; although in this, as in other instances, the Profession are desirous that the scheme should be considered and judged of upon its merits, not exclusively with a view to its operation upon the interests of a class, but with regard to its probable consequences upon the interests of all classes. That the Legal Profession are directly interested in resisting the attempted invasion of their rights,

at once accounts for and justifies the attitude of energetic and determined hostility assumed upon this occasion by that body, which represents the Attorneys and Solicitors of England. If we inquire who are the promoters of the schemes now submitted to Parliament,—without impugning their personal respectability, individually or collectively,—we may at once assume that they consist of a limited number of persons, who have encouraged themselves into hoping that the plan to which they have lent their names will prove remunerative. It is far from certain that the promoters could make the speculation profitable, but it is to be hoped that such reasons will be urged upon the Legislature as may effectually prevent the trial of an experiment fraught with so many evils to society.

Popular sympathy is also invoked for the joint-stock trust companies, upon the ground that the resistance to their formation is an attempt to restrict commercial enterprise, and they are sought to be assimilated to Insurance companies, from the establishment of which it may be admitted the public and the shareholders have derived equal advantage. It may be observed, however, that the insurance companies did not supersede any system previously existing, but were merely created to supply a public want, and that insurance companies do not in general require any special powers or authority from the Legislature to enable them to contract or fulfil their contracts with individuals. Apart from these distinguishing features, the scope and objects of the one class of companies and of the other are altogether dissimilar, and the proposed experiment is little deserving of public or parliamentary support, if its best recommendation is its supposed analogy to institutions so useful, but to which it bears so faint a resemblance, as it does to the insurance companies.

NEW LAW COURTS AND OFFICES.

OPINIONS OF THE PRESS.

In our Number for the 7th January, we extracted a leading article from *The Times* of the 4th of that month, advocating very powerfully the removal of the Courts from Westminster to the neighbourhood of the Inns of Court. The proposal, it should be borne in mind, comprehends, not merely the removal of the few and inconvenient Courts now existing in Palace Yard, but the construction of larger, more numerous, and

commodious Courts, and the concentration also of all the Law and Equity Offices in one edifice.

It is gratifying to the promoters of the measure that the public press has so energetically taken up the subject. From another leading article in *The Times* of the 27th January, we extract the following :—

“Among the public at large there can be only one opinion as to the wisdom, not to say the necessity, of removing the remainder of the Law Courts from the Palace of Westminster to the neighbourhood of the Inns of Court and the centre of the metropolis. No good reason can be given why lawyers should have their chambers in one part of London, their Courts in another, and their residences, a large proportion of them, in a third; or why, in an affair which requires the greatest promptness and quietness of deliberation, needless distances should be interposed, and absurd obstacles thrown in the way. The fortunate, or, as regards the present question, the unfortunate holder of briefs, after hurrying from his house at the West-end to his chambers, and getting through a hasty consultation, has to go, as fast as a cab can take him, a mile and a half, to Westminster. There he may have nothing to do the whole day, or he may have to return to his chambers when he ought to remain at Westminster, or he may elect to remain there the whole day leaving clients waiting at his chambers. Except the poetical, or rather antiquarian arguments drawn from the imaginary presence of royalty in Westminster Hall, only one reason can be assigned in favour of the present state of things, and that settles the question most effectually against it. Bring the Courts to the lawyers, we are told, and you will at once aggregate the existing monopoly by enabling lawyers in large practice to double that practice to the injury of the small people, who now get a few briefs which the others have not time for. This concedes the whole question of convenience, which is all that the public and the Legislature have to do with. Between great lawyers and small lawyers they cannot pretend to interfere, any more than between great and small merchants. So much for the general expediency of the proposed migration. To the site proposed there can be no objection, unless Lord Shaftesbury should have a word to say on behalf of the vast numbers of poor people who would have to find lodgment elsewhere. It lies between the Temple and Lincoln's Inn, having the Strand on the south, Carey Street on the north, Chancery Lane on the east, and Clement's Inn and New Inn on the west, on the borders of the cities of London and Westminster. The total site would be about 700 feet by 480; but only the centre of this would be devoted to the new Courts, the remainder being given to new chambers. In the plan before us the quadrangular block of Courts is about 450 feet by 300, and, when it is compared with the public buildings on the

same map and on the same scale, certainly does not seem too large, considering its comprehensive purpose.

"So far, nothing can be more rational and sober than this movement, and, if there were only some security that nothing grander would be attempted than what is here modestly proposed, we should not have another word to say about the matter. But can anybody who knows anything about public buildings and public demonstrations, about the Houses of Parliament, about bridges and their approaches, about prisons and asylums, about the Duke's funeral, or about any war steamer, or new dock—can any such person doubt the almost infallible result of once giving the reins to this project? Here is Westminster to be transported to the city, Temple Bar to be pulled down to admit it, and the Strand widened to 100 feet for its reception. Provision is to be made for Courts, consultation-rooms, waiting-rooms for witnesses, jurymen, and parties in attendance, rooms for attorneys, and indeed, for nearly as many purposes as Mr. Barry had to provide for at Westminster. Then there is a vast site, the total clearance being 700 by 450, though only somewhat less than half this is given to the Courts in the plan before us. Then there is a front to the Strand, in which there is room for a *façade* 600 feet long, with room for a still longer one in Carey Street. Then there are funds which it is humbly submitted are available for the purpose, and very magnificent funds they are, enough to send every architect to the third heaven of professional rapture. There is a certain accumulation of surplus interest from stock purchased with suitors' money, amounting to 1,241,188*l.*; a further sum of 200,000*l.*, accumulated surplus of the Suitors' Fee Fund since 1833; and surplus fees paid to the Consolidated Fund since January 1, 1838, to the amount of nearly half a million, and hitherto applied, unjustly, it is intimated, to the pensions and compensations of the holders of abolished offices. These sums amount to very nearly two millions, and nothing is said as to the limits within which they might be applied to the building of the new Courts. These would, however, to a great extent, pay for themselves, as, by way of set-off against the gross cost of site and building, we have the value of ground-rent of chambers to be erected on part of the site, the sale of numerous offices vacated by the change, the saving of rent now paid for offices and Courts, and the value of the present site of the Courts at Westminster. With these deductions a gross estimate of 1,197,074*l.* is boldly and rather ingeniously cut down to 673,574*l.* as the ultimate cost of the site and building. When this is all that is wanted for a great improvement, which shall combine with its special objects a new ornament to the metropolis and a fresh clearance of its principal thoroughfare; and when we are further told, that for this sum, and as much more as we please, we may draw to an unlimited amount on a fund three times as great, we may for once surely

give scope to our generosity;—unless, indeed, craven conscience whispers something about the above-mentioned Suitors' Fund, and reminds us of the proverb, that 'They who build houses with other people's money do but heap up stones for their own sepulchre.'

"Into this delicate question, however, we will not now go. We will confine ourselves to a warning of a very simple, not to say vulgar character, but quite necessary. Here is a grand opportunity, a grand site, a grand purpose, grand resources,—*omnia magna*. Is it in man, is it in Parliaments, is it in commissioners and architects, to be content with anything less than a Tower of Babel, a Nero's Palace, a Labyrinth of Crete, a Palace of Westminster? Is it possible that half a dozen Judges can sit with the usual attendance of counsel, attorneys, witnesses, and suitors, unless they have over their heads an entrance tower, a clock-tower, each 300 feet high, besides a smaller tower at every corner and intersection of the buildings? How can they possibly administer justice unless they approach her throne through a corridor at least 500 feet long? Then there must surely be Halls of Justice, not only for the use of the living, but also for the memorials of the dead, with innumerable niches and pedestals for all the Lord Chancellors and the other distinguished worthies of the law. The arts must be considered, and fresco painting not forgotten. Then, as we have failed at Westminster, that is all the more reason for another grand experiment in warming and ventilation in the new Law Courts. If experience is unfortunately decisive against floors that let in the wind, roofs that swallow the sound, and windows that shut out both air and light, something else can be tried that shall be as original and rather more convenient. Then, is it possible to have a public building in any good mediæval style that shall not have a parapet at least 20 feet high, surmounted by a roof twice as high again? As the *façade* towards the Strand must be purely ornamental, and, like that of the British Museum, have no reference whatever to the interior, except in spoiling the whole south side of the edifice, it is evident that we must have more room than the stingy 450 × 300 marked in the plan. We must have the whole from Chancery Lane to Clement's Inn, and leave the lawyers to find room elsewhere for their own chambers. Nay, as the design grows, and as the last-named places impose rather stubborn limits to the site, it has been suggested to devote the whole area of Lincoln's Inn Fields to the new Palace of Justice, and raise a structure that shall at least cover as large a superficial space as the Pyramid of Cheops. Remember that we have two millions of money to draw upon, most of it paid or deposited by poor creatures long since dead and gone. They deserve at least a grand monument for their money, and, as we cannot repay it,—*hoc fungar munere inani*,—give them at least this empty satisfaction. Seriously, is it a set of convenient Courts, sufficient for the purpose, or a grand new architectural extravaganza

we are about to build? Unless we make up our minds very early, the inevitable tendency of 'taste' and of circumstances will be in favour of all that is vast, monstrous, excessive, inconvenient, and useless. Common sense and firmness at the first may give us some really useful and comfortable Law Courts; otherwise the project will soon run to seed, that is, to towers, corridors, pinnacles, painted windows, griffins, lions rampant, and everything else that enriches a drawing and runs up an estimate."

The *Morning Post* of the 17th January, not only gave a full report of the deputation from the Incorporated Law Society to the Prime Minister and the First Commissioner of Public Works, but devoted a leading article to the subject, which we consider it useful to extract: thus showing the views of different public journalists on the question:—

"There cannot be the slightest doubt that the Chambers in which the Superior Courts of Law and Equity hold their Sittings at Westminster are 'inconvenient in situation, defective in construction, and insufficient for the due administration of justice.' The public, therefore, have a right to ask—how is it that years have been allowed to elapse without the application of any remedy to evils which are so notorious, so vexatious, and so easily curable? The answer, perhaps, may be, that to divorce the Courts of Law and Equity from Westminster Hall would do violence to many historical recollections, and make inapplicable some of those stereotyped phrases about that famous legal locality which run so glibly from the tongue. But an objection founded on mere sentiment (however commendable in itself) cannot surely be permitted to outweigh the convenience of both branches of the Profession, and to interfere with the discharge of those duties which they owe to the clients who employ them. Another answer has been, that the country could not afford the expense; and as this is one extremely difficult to deal with, let us see how the Council of the Incorporated Law Society propose to provide the funds. We may mention 'that the proposed site is in the centre of the metropolis, conveniently situated between the Temple and Lincoln's Inn—having the Strand on the south, Carey Street on the north, Chancery Lane on the east, and Clement's and New Inn on the west.' The expenses of site—erection of the Courts, combined with the Common Law and Equity offices—is put down at the sum of 1,197,074*l.*; but, deducting the value of the present site of the Courts at Westminster, the value of the Rolls Offices, and the saving of rent at present paid for offices now scattered in various localities, it is estimated that the ultimate cost of the site and buildings would be 673,574*l.* The Council propose to provide for this outlay in the following manner:—'The accumulation of surplus interest arising from stock purchased

with the suitors' money not directed to be invested (and to which interest they have no legal claim), amounting to 1,241,183*l.* stock—the sum of 201,028*l.* stock, the accumulated surplus of the Suitors' Fee Fund since 1833, after paying all the charges thereon—the surplus fees paid into the Treasury to the Consolidated Fund, since the 1st of January, 1838, under the 1 Vict. c. 30, amounting to nearly half a million; and though out of those receipts the pensions and compensations allowed to the holders of abolished offices have been paid, it is submitted that pensions or compensations, granted in effecting alterations in the law for the benefit of the community at large, should be paid out of the Consolidated Fund, and not by the suitors of the Courts.' The Chancellor of the Exchequer, we are afraid, is the only individual who cannot conveniently subscribe to the doctrine as to the inexpediency of law taxes for pensions and compensations, so well put by the Council of the Incorporated Law Society. If it be possible to provide a sum of 673,574*l.*, in the way proposed, without inflicting the slightest injury on any person, we trust that the time is near at hand when we may see realised Sir Charles Barry's magnificent conception of a central Palace of Justice, congregating under one roof all the superior tribunals of the land, and providing that permanent and certain home for our legal institutions, and for the general administration of justice which our forefathers exacted from an unwilling monarch, and embodied in one of the provisions of the great charter. We may mention, as additional reasons why this, the proposed removal, should take place, that the union of all the Courts in one place would tend to destroy 'the unwholesome separation' of the two Bars, that it would afford facilities for the scientific study of the law, and generally promote the convenience of the Judges, the Bar, the solicitors, and the suitors. The Council of the Incorporated Law Society say, with truth, 'that the aggregate of expense and loss arising in various ways from these hindrances in the way of justice, and of the general business of the law, would show that the erection of new Courts, in what may properly be termed the "law district," would be a measure of public economy, besides being calculated to lead to increased facilities and expedition in the practice of the Courts far beyond what can be hoped for under existing circumstances.' A deputation from the Incorporated Law Society waited upon Lord Aberdeen, and his lordship stated that he had communicated with the Lord Chancellor on the subject, and that the proposition had met with the noble and learned lord's sanction. Various matters of detail, no doubt, will have to be considered, but should the change take place, to the Incorporated Law Society will belong the merit of having brought to a successful issue a measure alike beneficial to the Profession and to the Public."

JURISDICTION OF LONDON COMMISSIONERS IN CHANCERY.

POWERS OF LONDON COMMISSIONERS.

MANY of our readers having been appointed London Commissioners to administer Oaths in Chancery, and others being interested in the subject as Solicitors, it may be satisfactory to know that the Lord Chancellor possesses the jurisdiction, independently of the act, of appointing Masters Extraordinary, now designated "Commissioners to administer Oaths in Chancery."

According to the report of the case, at page 200, *ante*, the Lord Chancellor and Lord Justice Turner decided the question submitted to the Court on the terms of the Act alone. It may be proper, however, to observe, that the Act expressly reserved, by the 5th section, all the existing powers of the Lord Chancellor; and the Commission itself refers, not only to the authority of the Act, but to all other powers of the Lord Chancellor.

It has been urged, that if the Lord Chancellor had power to appoint Masters Extraordinary in London, there would be some evidence of its exercise. At first it was supposed that no such evidence existed, but on further research, it appears that in the reigns of Elizabeth and James the 1st, orders were pronounced by the Lord Chancellor and Lord Keeper, expressly limiting the jurisdiction of Masters Extraordinary, at first to *three*, and afterwards to *five* miles from London. Without such limitation, it may be inferred that they had the same jurisdiction as the Masters in Ordinary.

These orders were expressly directed to secure the *fees* of the Masters in Chancery exclusively within the prescribed limits. It may readily be supposed that, in those times, the Masters in Ordinary had no inclination to travel on bad roads beyond those distances, and therefore the Masters Extraordinary were allowed to act anywhere beyond the privileged boundary. In recent times, the limit was extended to 20 miles, but by the orders of Lord Brougham, in 1833, it was reduced to 10 miles.

Now that the office of Masters in Ordinary have been abolished, and their right of fees terminated, the interests of the suitors and the convenience of the Profession require that the same facility which exists *beyond* 10 miles from London of taking the oaths of suitors and their witnesses, should also prevail *within* the 10 miles. The Public should not be compelled

to resort to the Record Office within certain limited hours, but be sworn either at their own homes or at the office of the nearest London Commissioner.

The following are the orders we refer to:—

By an order of the 30th Elizabeth (18th April, 1588), made by Sir Christopher Hatton, Chancellor, after directing *inter alia* a certain number of the Masters to attend the Court (a practice which continued to the time of Lord Brougham), it was ordered that, "in respect of the said attendance and service of the said Ordinary Masters, and of the place they have by ancient order of the said Court, his lordship's pleasure and commandment is, that all such fees, profits, and commodities as be incident and belonging to the Masters of the Chancery, shall be duly perceived and taken by the said Ordinary Masters onely, and by no other, and they to have and enjoy all prehemynences and place that to their offices and roomes opertain, secluding all Extraordinary Masters within *three miles* compas of the citie of London and suburbs of the same, and in all other places where the said Ordinary Masters shall be, from doing any manner of acts or exercising any authority belonging to the office and roomes of a Master of the Chancery, and from taking the fees due to the same, and prohibiting as well every clerk of the inrollment and others to receive or inroll of record any writings, deed, or bond, or any other act that shall be hereafter knowledged before any Extraordinary Master of this Court, as also all other clerks of the said Court, to bring or cause to be brought to any of the said Extraordinary Masters any writing, deed, bond, or other matters to be knowledged or otherwise dealt in by them or any of them from henceforth."¹

In the 21st James 1st (10th May, 1623), Lord Keeper Williams, Bishop of Lincoln, and afterwards Archbishop of York, ordered as follows:—"Upon the petition of Sir Thomas Harriss, Baronett, one of the Masters of this Court *extraordinary*, made unto the Right Honourable the Lord Keeper, his lordship is pleased, for the reasons therein expressed, to admitt, and soe doth order, that the said Sir Thomas Harriss shall have the same privilege of this Court as any other Master or officer attending this Court."²

Again, in the 31st James 1st (18th June, 1633), the Lord Keeper Williams, made the following order:—

"*Ex parte Magistrorum* } "Whereas in the time
hujus Curie in ordine. } of Sir Christopher
 Hatton, late Lord Chancellor, there was an
 order made for the restraining of all Extraordinary Masters within three miles compasse of London and suburbs thereof, and in all other places where anie of the Masters in Ordinary

¹ 1 Sanders' Chancery Orders, 60.

² Ibid. 144.

shall be from doing of anie manner of acts belonging to a Master of the Chancery, and prohibiting every clark of the inrollment, or others, to inroll or receive any writing or act thereafter to be acknowledged before anie Extraordinary Master, and all other clarks of the said Court to bring to any Master Extraordinary anie matter to be dealt in by them. Since which time, another order to the same purpose hath been made by the late Lord Chancellor Ellesmere. Yet, nevertheless, the Extraordinary Masters doe take acknowledgment of deeds, oaths of witnesses, answers, and affidavits, contrary to the purport and meaning of the said orders as is alleged. For restraint whereof, the Masters in Ordinary petitioned the Right Honourable the Lord Keeper for some new order to be made in that behalf. *It is therefore ordered* by his lordship, that the clerks of the inrollment for the tyme being, and all other clerks of this Court whome it doth or maie concerne, as they regard his lordship's favour and the avoidings of such punishments as by former precedents of this Court maie be inflicted upon them, shall forbear to receive any such acknowledgments or other deeds or acts of that nature, within that citie, or within *five mile* compasse of the same, by the Masters Extraordinary or anie of them, unless it be in a particular case with the special leave of this Courte first obtayned in that behalf.*

Since the preceding remarks and extracts were printed we have received the following communication :—

To the Editor of the Legal Observer.

SIR,—In the notice you kindly took of my little book, “Oaths in Chancery,” you differ from me in the construction of the 2nd section of the Act 16 & 17 Vict. c. 78, and of the Commission granted by the Lord Chancellor in pursuance thereof; and intimate that the Lord Chancellor had power, irrespective of that Act, to appoint fit and proper persons as Commissioners to administer Oaths, and thus, by inference, conclude that even if the terms of the London Commissioner's appointment does not express the extent of his jurisdiction, his jurisdiction is nevertheless not limited to his own office or place of business.

Not from any desire to remark upon your notice of my book, but merely for the sake of the Profession, many members of which seem still somewhat unsettled upon the point (notwithstanding the opinion expressed by the Lord Chancellor), I beg your permission to address to you one or two observations upon the subject.

It may be true that the Lord Chancellor has power, irrespective of the Act 16 & 17 Vict. c. 78, to appoint “fit and proper persons” as Commissioners to administer oaths; but it is also true that the London Commissioner's ap-

pointment originates with, and is governed by, the Act 16 & 17 Vict. c. 78.*

However, upon the issue raised, the question occurs,—Has the Lord Chancellor, in exercise of “all other powers” enabling him in that behalf, or, in fact, in exercise of any power irrespective of that vested in him by the Act 16 & 17 Vict. c. 78, extended the jurisdiction of the London Commissioner beyond the limit referred to?

I confess, I cannot discover in the terms of the London Commissioner's appointment anything to justify an affirmative reply.

There is but one word in the Commission *having any relation to extent of jurisdiction*, and that is the word “London,” which occurs in the style or designation of the person appointed. In all other respects the Commission does but recognise and repeat the terms of the *qualification* required by the Act,

The words “ten miles from Lincoln's Inn Hall,” and “within such ten miles,” occurring in the Act and in the Commission, appear to be used solely in relation to the *qualification* of the Commissioner.

If this be so, then the Act with which the appointment originates is the only source from whence the extent of the jurisdiction is to be ascertained.

Now, the construction which limits the jurisdiction of the London Commissioner to his own office or place of business is governed by the following considerations :—

1st. It were surely superfluous and unnecessary for the framers of the Act to say that a solicitor practises at his place of business. Yet this must be the construction of the words “at their respective places of business,” if such words relate to the *qualification only* of the Commissioner.⁴ It would seem, however, that those words are used in relation to his *jurisdiction*, his *qualification* being sufficiently expressed without them.

2ndly. If the words “at their respective places of business” were necessary and intended to apply to the *qualification*, and not to the *jurisdiction* of the London Commissioner, why were they omitted in the next (the 3rd) section in reference to the appointment as Commissioners of “persons practising as solicitors in the Isle of Man, in the Channel Islands?”

To limit the jurisdiction of the London Commissioner to his own office or place of business may, in some instances, be attended with inconvenience, but a possible inconvenience may be productive of far less important consequences than a positive irregularity. And it is by no means improbable that the question may yet arise, whether an oath administered by a London Commissioner at any place other

* Our Correspondent, we think, is mistaken in this assumption.—Ed.

⁴ The words in question might be used for the purpose of preventing Country Commissioners from administering oaths in the London district.—Ed.

³ Sanders' Chancery Orders, 148.

than his own office or place of business, is such an oath as upon which an indictment for perjury could be sustained.

This is bringing the question to a proper test; for, after all, the validity of the oath is the one essential consideration to be regarded.

THOS. W. BRAITHWAITE.

[To these observations, it seems necessary only to reply, that though the Act may possibly be construed as our correspondent contends, it also bears the better interpretation adopted by the Lord Chancellor, and which is clearly more beneficial to the suitor and the public. It is probable that the narrow and mischievous construction attempted to be put on the section was intended by the person who suggested the introduction of the words in question; but, if so, they have been inserted, for his purpose, in the wrong place and the intended mischief has failed.]

It may not be unreasonably asked, whether the Record Clerks and their subordinates, who are making this "mighty pothor," are willing to attend at their office from 9 or 10 until 5 or 6, daily, to administer oaths? During those hours, the solicitors will generally be found at their post, and for much less remuneration!]

A correspondent of *The Jurist* doubts the accuracy of our report of the Lord Chancellor's Decision (p. 200, *ante*), in the matter of the *Record and Writ Clerks*, who refused to file an affidavit sworn before a London Commissioner, not at his place of business, but at the house of the deponent who was at the time unwell. We have had an opportunity of comparing our report of the Lord Chancellor's decision with the note of Mr. Bacon, Q.C., on his brief, and find it to be strictly correct; but, in order to set the matter at rest, we subjoin a copy of the shorthand writer's notes of all that passed in Court on the occasion:—

Mr. Bacon:—"My Lord, there is a subject-matter I wish to bring under your Lordship's notice. A question has arisen under the Act of Parliament which was passed last year, relating to the appointment of persons to administer oaths in Chancery. Your Lordship has issued a commission under that Act of Parliament to persons, authorising them to administer oaths; and the question has arisen, upon the provisions of the Act of Parliament, whether those persons, who, as I read the Act, are clothed with all the powers that the Masters Extraordinary had formerly, can administer the oaths within the limits mentioned in the Act of Parliament,—that is, within 10 miles,—or whether they can administer those oaths in their own chambers only? A difficulty has

been raised at the office as to the filing of affidavits upon which it appears that the oaths were administered within the limits, but not at the place of business, or at the office of the Commissioner."

The Lord Chancellor:—"I recollect that passed in my mind. It depends upon the construction of the Act."

Mr. Bacon:—"Yes, it depends upon the construction of the Act entirely. The Act, by the 1st section, enacts, that 'the persons now styled "Masters Extraordinary in Chancery," shall cease to be so styled, and they and all persons hereafter appointed by the Lord Chancellor to execute like duties in England shall be designated "Commissioners to administer Oaths in Chancery in England," and shall possess and exercise all such powers and discharge all such duties as now appertain to the office of Master Extraordinary in Chancery by virtue of any Statute or order of the Court of Chancery, or of the Lord Chancellor, or usage in that behalf.'"

The Lord Chancellor:—"That applied to the country Commissioners."

Mr. Bacon:—"No, my Lord, it applies universally—that all persons who shall hereafter be appointed by your Lordship Commissioners to administer Oaths shall exercise those powers which heretofore the Masters Extraordinary in Chancery used to exercise. There is no doubt that Masters Extraordinary did administer oaths wherever it was found expedient, within the limits of the jurisdiction which had been assigned, and that they might go from their own houses to the houses of persons who were unable or unwilling, or to whom it might be inconvenient to go from their own houses to attend at the place of business of the Masters Extraordinary; and there administer the oath. The 2nd section authorises your Lordship 'to appoint any persons practising as solicitors within 10 miles from Lincoln's Inn Hall at their respective places of business'—those are the words that raise the doubt—to administer oaths and take declarations, affirmations, and attestations of honour in Chancery, and to possess all such other powers and discharge all such other duties as aforesaid—so that the reference is distinct to the powers and duties of Masters Extraordinary."

The Lord Chancellor:—"Are you applying *ex parte*?"

Mr. Bacon:—"My Lord, there is an affidavit."

The Lord Chancellor:—"I mean, is there any opposition?"

Mr. Bacon:—"No, my Lord."

The Lord Chancellor:—"I confess I think there is no doubt about it. That is the construction I put upon it when the question was first brought to my notice. It never could have been meant that the validity of an oath should depend upon the fact of whether it was administered at the usual place of business or not. That is a thing which it might be impossible to find out; and the Lord Justice Turner directs my attention to the 7th section, which shows

that the contrary construction would lead to very awkward consequences:—“That where any person is or shall be authorised to administer Oaths for the High Court of Chancery, such person is and shall be authorised to administer oaths for all suits and matters whatsoever in the Chancery of the County Palatine of Lancaster.” To be sure, it is not absolutely certain that that might not mean to administer at his own place of business an oath in the Court of the County Palatine, but it is hardly possible that that could be contemplated. There is rather an unfortunate position of the words. Practising at their respective places of business within 10 miles of Lincoln’s Inn Hall,—that is clearly what it means.”

Mr. Bacon:—“I should think so.”

The Lord Chancellor:—“They could not at their respective places of business possess all the powers that were enjoyed by the Masters Extraordinary in Chancery, because one power was, to go to a sick man and take his oath.”

Mr. Bacon:—“The facts of this case, which I may mention to your Lordship, are these:—Mr. Coverdale, who was a Commissioner appointed by your Lordship, was asked to attend Mr. Keith Barnes, a solicitor of this Court, who was unwell and was confined to his house, to administer the oath to Mr. Barnes. He waited on Mr. Barnes, and the jurat states that the affidavit is ‘Sworn at No. 8, Upper Portland Place, Saint Marylebone, in the county of Middlesex, this 2nd day of January, 1854. Before me, Jn. Coverdale, a London Commissioner to administer Oaths in Chancery.’”

The Lord Chancellor:—“I think that is perfectly sufficient.”

Mr. Bacon:—“It was desirable that it should be settled.”

The Lord Chancellor:—“Yes, it was very well that it should be mentioned. It was brought under my cognisance when I first made these appointments. I will not say I had no doubt about it, because when the language of the Act would possibly admit of two constructions it is a bold thing to say there can be no doubt; but, if the construction were otherwise, the mischief that was intended to be remedied would be left untouched.”

Mr. Bacon:—“Yes, my Lord. It was very desirable that the question should be settled; and I may mention to your Lordship that the gentlemen whose duty it is to attend to these matters very properly allowed affidavits to be filed in the meantime, in order that public business should sustain no interruption.”

The Lord Chancellor:—“I see Mr. Berrey there. The affidavit so sworn is quite correct, Mr. Berrey.”

Mr. Berrey:—“I beg your Lordship’s pardon, I did not hear what you said.”

The Lord Chancellor:—“You may take it that affidavits sworn anywhere, before these gentlemen, within the limits, are good, although they are not sworn at their own place of business.”

Mr. Berrey:—“I only wanted to have your Lordship’s decision upon it.”

LIMITED LIABILITY PARTNERSHIPS.

OUR attention has been recently called to an able pamphlet, containing the “Observations of a Solicitor on the right of the Public to form *Limited Liability Partnerships*, and on the Theory, Practice, and Costs of Commercial Charters,” by Mr. Edwin Wilkins Field.¹ The pamphlet comprises all the various topics of the subject, with disquisitions on the objections which have been raised to limited partnerships, and the Author suggests the precautions under which the proposed alteration of the Law may be safely carried into effect. Mr. Field does ample justice to preceding writers, and cites, we think, all the authorities that bear on the discussion of this important subject. We shall, for the present, submit to our readers the Author’s object and purpose, as stated in his introductory remarks.

“There are at least three or four preliminary questions which a reader will be sure to ask. In this introduction I would forestall and answer them. They will be—1st, Who are you? 2nd, What makes you write? 3rd, What are your special means of knowledge? 4th, And in the outset give some general idea of the views you are about to advocate.

“The title-page tells I am a solicitor; and two letters, copied presently, tell almost all else required. To them I would here add, on the first and third questions, that for more than thirty years I have been a labourer in those parts of the legal workshop which are addressed to the construction and repair of partnerships and companies; and to dealing with their remains when decayed. On the second, that I have always held a creed (unknown almost when I entered the law; but now, I am proud to say, largely entertained; eminently so, by my branch of the profession), that those who occupy, and live by and in the house of the Law, hold their tenement on a repairing lease; and I am solemnly convinced, that (except education) there is no public legislative question so all-important to the future of England, as this on which I am treating. A figment of truth, I believe, to form the nucleus of all the co-operative, socialistic, and Fourier theories; and to be the real spirit of vitality in our workmen’s strikes and their trade unions. And I believe that this spirit is to be extracted only by true legislation on the subject now before us.

“On the fourth question—I have not attempted to go over the whole subject; but rather to make these pages supplemental to an

¹ Messrs. Longman & Co. are the publishers.

a business by the plaintiff for the defendant with reference to one particular suit. The whole appears upon the correspondence.

* * * The charges are, in fact, for a series of things done in a particular Court, in pursuance of orders received from the defendant, in letters which clearly pointed out the Court in which the business was transacted. Each of the bills, in my opinion, constituted a sufficient signed bill to satisfy the Statute. The question is, whether they are such as to give the party to be charged such fair information of those matters which the Statute and the practice of the Court require, as he is reasonably entitled to. A strict and literal compliance with the Statute, has been held not to be enough, where the information necessary to enable the client to know where he is to apply to obtain a taxation of the bill is wanting. Upon the whole, I think there can be no reasonable doubt that the delivery of the bills in question was a substantial, as well as a strict and literal, compliance with the Statute." *Cozens v. Graham*, 12 C. B. 398.

NOVA SCOTIA LAW REPORTS.

THE decisions of the Supreme Court in Nova Scotia between the years 1834 and 1841 have just been collected and published by James Thomson, Esq., Advocate, of Halifax. They are dedicated to the Hon. *Brenton Halliburton*, Chief Justice of the Supreme Court; and in his letter to the learned Judge, Mr. Thomson well observes, that the public of the province have for half a century had the advantage of the sound sense and legal learning of the Chief Justice in determining litigated rights. From the high estimation in which the learned Judge's decisions have ever been held by the Profession, it was a source of regret that so few were in existence in a tangible form; and Mr. Thomson has therefore been induced to publish the present compilation of Mr. Justice Halliburton's decisions. These reports must be exceedingly valuable to our brethren in North America, and we anticipate they will be read with interest on this side the Atlantic. The cases are judiciously selected and ably reported. We submit to our readers a short summary or digest of the points comprised in the present volume and which are generally in accordance with the Law of England.

"*Abseonding debtor*.—Where the affidavit

on which to ground an attachment contained a claim in an action sounding in damages, held that the process could not be sustained. *Marrison v. Murison*.

"Where a creditor, to whom an absent debtor had assigned all his goods, received letter of instructions directing payment of surplus proceeds to certain creditors, with which he expressed his willingness to comply, was summoned as agent by a creditor not named in the letter, held, that not having sufficient to pay the parties mentioned in the letter, there was no goods of the absent debtor in his hands that could be attached. *Metzler v. Harvie*.

"*Acknowledgment*.—Where a party, in answer to an application for payment of certain notes, said, 'if he must pay the notes he would if he had time given him,' held, not to be a sufficient acknowledgement to take case out of the Statute. *Billings v. Rust*.

"Where, to an application for payment of a note, defendant said, 'I have had considerable dealing with the plaintiff, and if, upon those dealings, there is anything due him, I am willing to pay him,' it was held not sufficient. *Keys v. Pollock*.

"*Agent*.—Where the master of a vessel, at the instance of the plaintiff's clerk, purchased for cash, and received the amount from the general agent of the owner either before or immediately after the delivery of the goods, and the master fraudulently retained the sum so received to his own use, held, that the owner (who had received the goods without knowledge of the fraud of the master) was not liable. *Almon v. Tremlet*.

"*Arbitration*.—Where arbitrators, after having examined witnesses on both sides, selected an umpire, and then refused to allow plaintiff's witnesses to be re-examined, but re-examined defendant's, and gave an award in his favour, the Court would not support the award. *Moore v. Powley*.

"The exclusion of the parties during the examination of the witnesses before arbitrators, will not necessarily invalidate the award. *Ibid*.

"*Assignment*.—Preferential to a *bond fide* creditor valid. *Tarrant v. Sawyer*.

"Where the consideration expressed on the face of an assignment is larger than the actual debt due by the debtor to the assignee, it is not necessarily fraudulent. *Ibid*.

"The declared intention to exclude any creditor or class of creditors will not render such an assignment invalid. *Ibid*.

"The assignor continuing in possession of the goods assigned is not a conclusive badge of fraud. *Ibid*.

"*Attornment*.—Where A., holding land under an agreement for purchase from original grantee, was prevailed upon by B., claiming under a certain grant, to attorn, held, that such attornment was not sufficient to enable B. to turn A. out of his possession. *Miller v. Lant*.

"*Auctioneer*.—Receiving an article, with instructions not to sell under a certain sum, is liable if he part with it for a less amount. *Mason v. Chamberlain*.

"Boundary.—A boundary may be settled between adjoining proprietors by parol. *M'Lean v. Jacobs.*

"The grantee of water lot bounded on the shore, is entitled to take up to high water mark, and the line of his grant changes as sea encroaches or retires. *Esso v. Mayberry.*

"Land bounded on the sea shore increases and diminishes with the encroachment or retirement of the sea. *Ibid.*

"Damages.—In an action for a breach of promise of marriage, held, that pregnancy might be given in evidence in aggravation of damages. *Gilmore v. Dewar.*

"Evidence.—In an action for breach of promise of marriage, the statement of a witness, that he had heard a person say he had had connexion with the plaintiff, is not admissible. *Gilmore v. Dewar.*

"Where the deposition of a witness was taken, and the witness was examined at the trial of the cause, but that trial was set aside, and witness died, held, that such deposition could be used at the new trial. *Brown v. Boole.*

"Fraud.—Where question of fraud arises on a bill of sale to a creditor, it is exclusively for the consideration of the jury. *Tarratt v. Sacyer.*

"Grant.—Where a grant of land by the Crown contained clause making it void unless land granted was settled on within a certain time, held, that a subsequent grant was invalid, not being founded on inquest of office. *Wheelock v. M'Kown.*

"Where a grant to A. contained a recital that the land had been formerly set off to B., and where a party was in possession under agreement to purchase from B., held, that the grant was void, the Crown not being in possession. *Miller v. Lanty.*

"Insurance.—Where a vessel being in a hopeless condition, notice of abandonment was given to the underwriters and accepted by them, but by fortuitous circumstances she was saved from her perilous situation, held, that the underwriters were not liable for a total loss. *Kenny v. Halifax Marine Insurance Company.*

"Nonsuit.—A plaintiff may become nonsuit at any time before the delivery of the verdict. *Grant v. Protection Insurance Company.*

"Possession.—Where a boundary is a straight line terminating in a harbour, the fencing by that line to the water's edge, and possession of land so fenced, is sufficient to give possession of the land covered with water. *M'Lean v. Jacobs.*

"Seaman.—Where a seaman shipped for an entire voyage, and being injured while in the performance of his duty, was left at an intermediate port, held, that he was entitled to wages for the entire voyage. *Ralston v. Baras.*

"Where the owners furnishes a seaman, so injured, with surgical aid, and maintains him at such intermediate port, held, that he cannot set-off the sums so expended against such claim for wages. *Ibid.*

"Tenant.—Notice to quit in April next, the tenancy expiring on the 8th of that month,

served three months previous thereto, held, to be sufficient. *Brown v. Boole.*

"Tenant in common.—One tenant in common may prostrate, and justify prostration of, any building erected by a stranger on the land of which he is joint owner. *Esso v. Mayberry.*

"Trespass.—Will not lie against grantor or his tenant, by grantee, before actual entry of grantees. *Langville v. Langville.*

PRACTICE OF COUNTY COURTS.

WARRANT OF COMMITMENT, DURATION OF.
—RULE 131 UNDER 12 & 13 VICT. C. 101, s. 12.

A WARRANT issued from the Wandsworth County Court on September 19, 1851, for the plaintiff's commitment to prison for 10 days for nonpayment of an instalment, and he was arrested in virtue of such warrant on December 16 following, and detained in prison until December 25. *Williams, J.*, said, "the plain meaning of the 131st rule¹ is, that the warrant shall only continue capable of being put into operation for the period of three calendar months; not that the warrant having been executed, the detention under it shall cease to be lawful from the moment the three months have expired." *Hayes v. King*, 12 C. B. 233.

DUTY OF CLERK TO PREPARE NOTICES OF JUDGMENTS OR ORDERS FOR SERVICE ON DEFENDANT.

No duty is imposed by the 9 & 10 Vict. c. 95, on the clerk of a County Court to prepare a notice in writing of an order for the payment of money, for delivery or transmission to the defendant in the plaint, nor does the 114th rule under the 12 & 13 Vict. c. 101, s. 12,¹ cast on the County Court clerk the duty of making a copy of the order. *Jervis, C. J.*, said,—“It does not enlarge the duties of the County Court clerk beyond the provisions of the Act of Parliament, but was framed merely for the purpose of pointing out by whom the service was to be made of orders which required service by the provisions of the Act of Parliament, or by the practice of the Court.” A demurrer was therefore allowed to an action against the clerk for negligently preparing a notice of an

¹ Under the authority of the 12 & 13 Vict. c. 101, s. 12, which provides, that “warrants of commitment whenever issued, shall bear date on the day on which the order for commitment was made, and shall continue in force for three calendar months from such date, and no longer.”

order on the defendant for payment by *monthly* instead of by *weekly* instalments as ordered by the Judge, and whereby the defendant had omitted to make the payment, and had his goods seized under a warrant of execution. *Robinson v. Gell*, 12 C. B. 191.

CAMBRIDGE BOROUGH COURT.

By an Order in Council, dated 30th January, 1854, it was ordered that, within one month after the publication of such order in the *London Gazette*, the provisions of the "Common Law Procedure Act, 1852," and the rules made, and to be made, in pursuance thereof (except sections 97, 98, and 120 of the said Act, rules 57, 81 to 111, both inclusive, 115 to 117, both inclusive, 123 to 134, both inclusive, 173 and 175, and except such part of the said Act as relate to Special Juries, Terms, and Pleadings between the 10th day of August and the 24th day of October in any year), should apply to the Court of Record of the Borough of Cambridge, called the Court of Pleas.—From the *London Gazette* of 31st Jan.

NOTES OF THE WEEK.

SOMERSETSHIRE ASSIZES.

It is ordered by her Majesty in Council, that the Assizes and Sessions, under the commissions of gaol delivery and other commissions, for the dispatch of civil and criminal business, shall in future be holden at Taunton and at Wells only, in and for the County of Somerset, instead of as heretofore at Wells, Taunton, and Bridgewater.—From the *London Gazette* of 27th Jan.

CHARITABLE FUNDS' TRUSTEES.

In pursuance of the provision contained in the 51st section of "The Charitable Trusts' Act, 1853," I do appoint *Thomas Hare, Esq.*, and *Walker Skirrow, Esq.*, the Inspectors for the purposes of the said Act, to be, jointly with the Secretary to the Board of Charity Commissioners for England and Wales, Official Trustees of Charitable Funds. Dated this 26th day of January, 1854. (Signed) Cranworth, C.—From the *London Gazette* of 31st Jan.

NEW COUNTY COURT JUDGE.

Sir *John E. Eardley Wilmot* and *Edward Cooke, Esq.*, have been appointed Judges of the Bristol and York County Courts (Circuits 55 and 11), in the room of *Arthur Palmer* and *C. H. Elsley, Esqs.*, resigned.

LAW APPOINTMENTS.

Henry Wilcocks Hooper, Esq., of Exeter, has been appointed Coroner of that City, in the room of *John Warren, Esq.*

The Queen has been pleased to appoint *Cuthbert Edward Ellison, Esq.*, to be a Police Magistrate and Justice of the Peace for the Borough of Newcastle-on-Tyne.—From the *London Gazette* of 27th Jan.

COLONIAL APPOINTMENTS.

The Queen has been pleased to appoint *Anthony Musgrave, Esq.*, to be Colonial Secretary and Clerk of the Crown for the Island of Antigua.

Her Majesty has also been pleased to make the following appointments for the Island of Malta,—viz., *Doctor Paolo Dingli* to be President of the Court of Appeal; *Doctor Antonio Micallef* to be one of her Majesty's Judges; and *Doctor Adriano Dingli* to be Crown Advocate.—From the *London Gazette*, of 31st Jan.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

Greene v. Broughton. Jan. 28, 1854.

DEED OF GIFT OF ANNUITY.—PAYABLE FOR LIFE OF GRANTEE AND NOT OF GRANTOR ONLY.

Held, *dismissing without costs, an appeal from Vice-Chancellor Wood, that the following clause in a deed of gift entitled the grantee to the payment of an annuity for life, and not during that of the grantor only; whereby she promised to pay her son "during his life, or in the event of his decease to his wife, M., during her life, the sum of 100l. per annum, in half yearly payments of 50l., and for which he or she is authorised to draw on me through my bankers, Messrs. A. & Co., of Boulogne. In case any circumstances should induce me to change my bankers, I promise to name some other person to honour the drafts," and with a pro-*

viso for its ceasing on his wife becoming a widow and re-marrying.

THIS was an appeal from the decision of Vice-Chancellor Wood. It appeared that Mrs. Charlotte Greene, in a deed of gift promised, in the event of a contemplated marriage taking place between her son William and Miss Margaret Clarke, that she would pay to him "during his life, or in the event of his decease to the said Margaret, his wife, during her life, the sum of 100l. per annum in half-yearly payments of 50l., and for which he or she is authorised to draw on me through my bankers, Messrs. Adam & Co., of Boulogne; the first payment to be made in December, 1839. In case any circumstances should induce me to change my bankers, I promise to name some other persons to honour the drafts for 50l. in favour of my son, William, or his said wife Margaret. I however beg to stipulate, that I consider the said arrangement null and void if

the said Margaret, being the widow of my son, should at any future time marry again. The payment of the said sum shall cease from the day of such marriage." The Vice-Chancellor having allowed exceptions to the Master's report, and held that the annuity was payable for the life of the grantee and not during that of the grantor only, this appeal was presented.

Roll and *Cairns*, in support; *Malins* and *Selwyn*, contra; *Prendergast* for other parties.

The Court dismissed the appeal, but without costs.

Pryce v. Bury. Jan. 28, 1854.

EQUITABLE MORTGAGE OF COPYHOLD PROPERTY.—TENANT IN COMMON.—COSTS OF SURRENDER.

The defendant, on his brother obtaining a loan from the plaintiff on a promissory note with the deposit of deeds of copyhold property of which they were tenants in common, under a memorandum whereby his brother undertook to surrender to the plaintiff, added at the foot—"I join in the deposit," and signed the same: Held, dismissing an appeal from Vice-Chancellor Kindersley, with costs, that the plaintiff was only entitled to a foreclosure in respect of the brother's moiety only, and that the defendant, who became entitled to the whole on his brother's death, was liable to the costs of surrender to the plaintiff.

THESE were appeals from the decisions of Vice-Chancellor Kindersley (reported 2 Drewry, 11, 41; and ante, pp. 55, 110). It appeared that the defendant, Frederick Bury, had applied to the plaintiff on behalf of his brother, John William Bury, for a loan of 500*l.*, which the plaintiff accordingly lent, taking the promissory note of the defendant's brother and a deposit, as a collateral security, of the deeds of certain copyhold property, of which the defendant and his brother were tenants in tail in common, with a memorandum by John W. Bury, undertaking to make a formal surrender of his interest therein by way of further security, whenever required, and the defendant wrote at the foot—"I join in the deposit," and then signed. On the death of John W. Bury, the plaintiff sought to charge the whole estate with payment of the mortgage-debt, but the Vice-Chancellor had held that the moiety of John W. Bury was alone chargeable. The Vice-Chancellor had subsequently held that the defendant was bound to surrender, and to take the necessary steps for the purpose at his own expense. These were appeals from such decisions.

W. W. Cooper, for the plaintiff; *Glasbe* and *De Gez* for the defendant.

The Court dismissed the appeals with costs.

Lords Justices.

Lord v. Wightwick. Jan. 28, 1854.

SOLICITOR HEARD IN ABSENCE OF COUNSEL ON OBJECTIONS TO MINUTES OF DECREE.

The Court heard the defendant's solicitor in

the absence of his counsel, on objections to the minutes of decree proposed by the plaintiff.

IN the absence of the defendant's counsel, who were engaged elsewhere,

The Lords Justices heard Mr. Gedy, the defendant's solicitor, on objections to the minutes of the decree proposed by the plaintiff, and continued his arguments, although his counsel afterwards came into Court.

Roll, *Campbell*, and *C. Chapman Barber* for the plaintiff.

Master of the Rolls.

King's College Hospital v. Whieldon. Jan. 14, 20, 1854.

CHARITABLE BEQUEST TO INFIRMARY.—LATENT AMBIGUITY.—EVIDENCE OF TESTATOR'S INTENTION.

A testator gave a legacy to "the Carey Street Infirmary, Lincoln's Inn Fields, London:." Held, that the "Public Dispensary," which was established in Carey Street when the testator resided in the parish, was entitled, and not "King's College Hospital," which was not then established—although the former only dispensed medicines to out patients and the latter received the sick as inmates—the costs to come out of the fund.

THE testator, Mr. Thomas Croft, by his will, dated in September, 1852, gave 400*l.* 3 per cent. consols to several charitable institutions, and amongst others, to "the Carey Street Infirmary, Lincoln's Inn Fields, London." It appeared that the bequest was claimed by King's College Hospital which was established in 1839, as a public hospital or infirmary, in the old St. Clement Danes' Workhouse, at the corner of Carey Street and Portugal Street, and also by the Public Dispensary, which was established in Carey Street in 1782, and was in 1806 removed to Bishop's Court, Chancery Lane, and afterwards, in 1850, brought back to Carey Street. The former received sick as inmates, but the latter only dispensed medicine to out patients.

Willcock and *Sir W. B. Riddell* for the plaintiffs: *Roupe* and *Speed* for the dispensary; *Berkeley*, for the executors.

Cur. ad. vult.

The Master of the Rolls said, that as there was a latent ambiguity in the will, evidence was admissible to show the testator's intention, and from which it appeared he had resided in the parish before the removal of the dispensary and before the establishment of the hospital, and that the former was, therefore, entitled to the legacy, but that as the plaintiffs had grounds for instituting the present proceedings, the costs of all parties would come out of the fund.

Worley v. Worley. Jan. 28, 1854.

WILL AND CODICIL.—REVOCATION OF APPOINTMENT OF EXECUTOR BUT NOT OF TRUSTEE.—INVESTMENT OF RESIDUE.

A testatrix, by her will, appointed her son H.,

one of her executors and trustees, and by a codicil, on H. going abroad, she revoked his appointment as executor, but otherwise confirming her will, and appointed her son J. her executor: Held, that the residuary estate must be invested in the name of H. as trustee, as well as of J. and the third party.

THE testatrix, by her will, dated in July, 1852, appointed her son Henry and another person her executors and trustees, but by a codicil dated in May, 1853, she revoked the appointment of her son Henry, who had since gone to Australia, as executor, and appointed her son James, and directed he should have all the powers and authorities to enable him to carry out the trusts of her will, that her other son had, but she declared that she did not mean to revoke her will otherwise than to appoint James her executor. It appeared that a question arose as to the names in which the residuary estate was to be invested.

Roupell, Glasse, J. S. Moore, and Stephen for the several parties.

The *Master of the Rolls* said, that Henry continued a trustee as well as James, and that his name must be joined with the others.

In re Markwell's Trust. Jan. 30, 1854.

CHARITABLE TRUSTS' ACT, 1853.—PAYMENT INTO COURT UNDER TRUSTEE RELIEF ACT.—PETITION FOR SCHEME.—PROCEEDINGS ACTUALLY PENDING.

Held, that the payment of a fund into Court under the 10 & 11 Vict. c. 96, bequeathed for charitable purposes, is not such a "proceeding" under the 16 & 17 Vict. c. 137, s. 17, as exempts a petition, presented after the Act came into operation, for a scheme, from the previous certificate of the Charitable Commissioners as "pending" when the Act passed.

THIS was a petition under Sir S. Romilly's Act, for an order to draw up a scheme for the management of a bequest of 1,200*l.* 3 per cent. consols, in trust as to two guineas, of the dividends of a yearly sermon to the parish minister, and as to the remainder for certain charitable purposes. It appeared that the fund had been paid into Court under the 10 & 11 Vict. c. 96, before August 20 last, when the Charitable Trusts' Act (16 & 17 Vict. c. 137), came into operation, but that the petition was not filed until the month of October.

Grenside, in support, referred to s. 17, which enacts, that "before any suit, petition, or other proceeding (not being an application in any suit or matter *actually pending*) for obtaining any relief, order, or direction concerning or relating to any charity, or the estate, funds, property, or income thereof, shall be commenced, presented, or taken, by any person whomsoever," except upon the certificate of the board; and contended that the certificate of the Commissioners was not therefore necessary.

Wickens for the Commissioners.

The *Master of the Rolls* said, that the payment into Court under the Trustees' Relief Act, did not constitute a proceeding within the exception of sect. 17 of the Charitable Trusts' Act, as the former Act only substituted the Court for the trustees, in order to avoid responsibility; and the petition was therefore ordered to stand over to obtain the certificate of the Commissioners.

Vice-Chancellor Kindersley.

Viscount Wellesley v. Lord Mornington. Jan. 19, 1854.

ORDER FOR ENROLMENT OF DECREE AFTER SIX MONTHS, ON AFFIDAVIT OF SERVICE OF NOTICE OF MOTION.

Where a decree had not been enrolled within the six months limited by the 2nd Order of August 7, 1852, a motion was granted under Order 3 for its enrolment on an affidavit of service of notice of motion on all parties.

IT appeared that the decree which had been made in this suit had not been enrolled within the six months limited by the 2nd Order of Aug. 7. 1852. This motion was accordingly now made under the 3rd Order for its enrolment.

Freeling in support on an affidavit of service of notice of motion on all parties.

The *Vice-Chancellor* granted the application.

Yeld v. Simpson. Jan. 27, 1854.

PAYMENT OF FUND OUT OF COURT.—EVIDENCE OF DEATHS IN INDIA.

An order was refused, on petition, for payment of a fund out of Court on the deaths of A. and B., on affidavit that administration had been granted in India to A.'s estate, on evidence that he had not been heard of since the retreat from Cabul, and that defendant had attended B.'s funeral in India; and held, that the evidence on which administration was granted to A.'s estate, and the certificate of B.'s burial, must be produced.

THIS was a petition for payment of a fund out of Court, on the death of Colonel and Lady Chambers.

Bazalgette in support, on affidavits by a person that he had seen the dead body of Lady Chambers, and had attended her funeral in India, and that administration had been granted by the Indian Courts to the estate of Colonel Chambers, on the evidence that he had not been heard of since the retreat from Cabul through the Khyber Pass.

The *Vice-Chancellor* said, that a certificate must be obtained of the burial of Lady Chambers, and the evidence be produced upon which administration had been granted.

Nottley v. Palmer. Jan. 28, 1854.

DEVISE TO WIFE IN BAR OF DOWER AND THIRDS.—CLAIM TO FREEBENCH IN COPYHOLDS.

Devise of property to testator's wife with a declaration that it should be held by her in full satisfaction and discharge of all dower and thirds to which she might be entitled at law or otherwise : Held, to bar her right of freebench in copyholds.

A TESTATOR, by his will, devised certain property to his wife, with a declaration that it should be held by her in full satisfaction of all dower and thirds to which she might be entitled at law or otherwise. A question arose as to her right to freebench in certain copyholds.

Swanston and F. S. Williams, for the widow; *Charles Hall*, contra, was not called on.

Lee and Hanson for the plaintiffs, the trustees; *Glaspe, Birkbeck, Brooksbank, and Bowring* for other parties.

The Vice-Chancellor said, that the testator clearly intended to include copyholds from the comprehensive words he had used, and the claim of freebench must therefore be disallowed.

Vice-Chancellor Stuart.

Hatch v. Searles. Jan. 27, 1854.

APPEAL FROM CHIEF CLERK'S CERTIFICATE.—NO ARGUMENT BY COUNSEL IN CHAMBERS.

Seamble, that counsel will not be heard at Chambers on appeal from the certificate of the chief clerk, but the matter will be adjourned into open Court, where the case is of sufficient importance to be argued by counsel.

THIS was an application to adjourn the hearing before the Judge at Chambers of the summons to review the certificate of the chief clerk disallowing a claim in this creditor's suit, into Court in order to have the case argued by counsel.

F. T. White in support.

The Vice-Chancellor, after observing that he had made a rule not to hear counsel at Chambers, said, that as the present case appeared of sufficient importance to be argued by counsel, the application would be granted.

Vice-Chancellor Wood.

Esparte Midland Counties' Railway Company. Jan. 28, 1854. .

SALE TO RAILWAY COMPANY AND DEATH OF VENDOR BEFORE CONVEYANCE.—TRUSTEE ACT, 1850.—SUIT FOR SPECIFIC PERFORMANCE.

A testator died before the conveyance of an estate he had contracted to sell to a railway company after the date of his will, whereby he devised the same : Held, that it was not a case under the 13 & 14 Vict. c. 60, for the appointment of a person to convey in

the stead of the trustee, an infant, but that a suit for specific performance must be instituted.

THIS was a petition under the Trustee Act, 1850 (13 & 14 Vict. c. 60), for the appointment of a person to convey an estate which a testator had contracted to sell to the company, after the date of his will, whereby he devised the same in trust for his wife for life, with remainder to his nephew—the trustee being an infant.

Speed in support; *Cairns* for other parties.

The Vice-Chancellor said, that the case was not within the Act, as the vendor died before the performance of the agreement, but that the parties must proceed as for the specific performance of the contract, and the petition would therefore be refused.

Court of Queen's Bench.

Regina v. Governors of the Russell Institution. Nov. 12, 1853; Jan. 18, 1854.

LITERARY INSTITUTION.—LIABILITY TO POOR-RATE.—READING-ROOM FOR PERIODICALS AND JOURNALS.

An institution was established for the gradual formation of a library of ancient and modern authors, for the establishment of a reading-room with English and foreign periodicals and journals, and for the delivery of lectures on literary and scientific subjects. The public were admitted on the purchase of tickets, but no bonus or dividends were divided among the members : Held, that the society was not entitled to exemption from poor-rate under the 6 & 7 Vict. c. 36, s. 1, as "instituted for purposes of science, literature, or the fine arts exclusively."

THE Russell Institution, Great Coram Street, was established in 1808, for the gradual formation of a library of ancient and modern authors, for the establishment of a reading-room with English and foreign periodicals and journals, and for the delivery of lectures on literary and scientific subjects, and the shareholders were at first alone entitled to the benefit of the institution and to receive dividends on their shares. Under the existing rules it was, however, now provided, that no bonus or dividend should be paid on the shares, and the benefits of the society were also extended to subscribers. The public were admitted to the lectures on the purchase of ticket, and soirées were occasionally held, and the members were entitled to dispose of a certain number of tickets among their friends. A certificate had been obtained under the 6 & 7 Vict. c. 36,¹ of exemption from poor-rate, but on a rate being assessed this appeal was presented.

Bodkin in support of the rate, cited *Regina v. Gaskell*, 16 Q. B. 472.

¹ Which, by s. 1, exempts from rates, on obtaining the certificate of the barrister, "any society instituted for purposes of science, literature, or the fine arts exclusively."

Paskley, contra, on the ground the primary object of the institution was for the promotion of literature and science.

Cur. ad. vult.

The Court said, it was unnecessary to inquire whether the institution was supported wholly or in part by annual voluntary contributions, inasmuch as it was not a society exclusively established for the purposes of "science, literature, or the fine arts"—the establishment of a reading-room for weekly and daily newspapers, directories and railway time-tables for the use of the members, being one of its objects. The institution was liable to be rated, and judgment must be given in favour of the parish.

Couch v. Steele. Jan. 18, 1854.

ACTION FOR PRIVATE INJURY CONCURRENT WITH PENALTY FOR NEGLECT OF PUBLIC WRONG.

The 7 & 8 Vict. c. 112, s. 18, imposes a penalty of 20l. on the owner of vessels not provided as therein prescribed with medicines and medicaments, and s. 62 directs the mode of recovering the same: Held, that a sailor had notwithstanding a right of action for private injury sustained against the owner.

THIS was an action by a seaman to recover damages from the owner of a merchant vessel, for not properly supplying the vessel with medicines on a voyage to Calcutta, under the 7 & 8 Vict. c. 112, s. 18, which enacts, that "every ship navigating between the United Kingdom and any place out of the same, shall have and keep constantly on board a sufficient supply of medicines and medicaments suitable to accidents and diseases arising on sea voyages, in accordance with the scale which shall from time to time or at any time be issued by the Lord High Admiral, or by the Commissioners for executing the office of Lord High Admiral, and published in the *London Gazette*;" "and in case any default shall be made in providing and keeping such medicines," &c., "the owner of the ship shall incur a penalty of 20l. for each day and every default;" and s. 62 directs the mode of recovering the same. (See report on another point, *ante*, p. 77).

Milward for the plaintiff; *Kingdon* for the defendant.

Cur. ad. vult.

The Court said, the question was, whether an action could be maintained by a private individual, who had suffered injury, for the neglect of an act commanded by the legislature to be performed as a matter of public benefit, and for the neglect of which a special penalty had been affixed. It was clear that, where the neglect to perform a public duty operated as a private injury as well as a public wrong, a private remedy for such injury ought to exist, and there was no authority to show the common law right to maintain such an action was taken away on the ground that the breach of the public duty was liable to be visited with a pe-

nalty at the suit of a common informer. The plaintiff was therefore entitled to judgment.

Thomas v. Bell. Jan. 20, 1854.

ACTION BY CREDITOR AFTER ASSIGNMENT AND RE-ASSIGNMENT OF DEBT.—LAW OF CALIFORNIA.

To an action, the defendant pleaded that the plaintiff had assigned the debt to R. in California, who had sued for the same and obtained judgment. Demurrer and replication to this plea that R. had re-assigned to the plaintiff the unsatisfied judgment: Held, that as the assignment and re-assignment were valid according to the law of California, and there would operate no injustice or inconvenience in giving effect to that law, the plaintiff was entitled to recover.

To this action to recover wages due to the plaintiff from the defendant, the latter pleaded that the debt had been assigned by the plaintiff, in California, to one Robinson, who had, as he was entitled according to the law of California, obtained a judgment for the present and other debts, although he had not levied sufficient to satisfy the whole. The plaintiff demurred to this plea, and replied, that Robinson had re-assigned to him as original creditor the judgment which remained unsatisfied, as he might in accordance with the law of California, and that no portion of the debt now sued for had been recovered by Robinson. To this replication there was a demurrer.

Atherton for the plaintiff; *Cowling* for the defendant.

The Court said, that as by the law of California the plaintiff could assign the debt to a third person, who might re-assign to the original assignor, and there was nothing inconvenient or unjust in giving effect to that law, the plaintiff was entitled to bring this action and to judgment.

Regina v. Mayor and Assessors of Dartmouth.
Jan. 23, 1854.

BURGESS LISTS.—REJECTION ON GROUND OF INFORMALTY.—MANDAMUS.

It appeared that lists of burgesses had been rejected by the mayor and assessors, on the ground of a variance from the form in Schedule D. of the 5 & 6 Wm. 4, c. 76: a rule was made absolute for a mandamus to hold a revision Court, in order that a return might be made stating the facts, upon which the question would be raised for discussion by demurrer.

THIS was a rule nisi obtained on Nov. 24 last, for a mandamus on the defendants to hold a Court, in order to revise the list of burgesses for the parish of Townstall, in the above borough, under the 5 & 6 Wm. 4, c. 76, s. 18. It appeared that the list had been rejected, on the ground that the place of abode of the voters had been described as of the borough only in the column for the "parish or parishes" in

which they had been rated, in accordance with the form in Schedule D., No. 4,—the name of the parish being added to the names of the streets, in the column for the situation of the property.

By s. 142 it is enacted, that "no misnomer or inaccurate description of any person, body corporate, or place named in any schedule to this Act annexed, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to such person, body corporate, or place, provided that the description of such person, body corporate, or place, be such as to be commonly understood."

Butt and Maynard showed cause; *Kingleke, S. L., and Norman* in support.

The Court said, that the rule would be made absolute for a mandamus, in order that a return might be made stating the facts, upon which the question would be raised for discussion by demurrer.

Heath v. Smith. Jan. 23, 1854.

PATENT.—ACTION FOR INFRINGEMENT.—PRIOR USER IN WAY OF TRADE.

Where an invention had been used by five firms in the way of their trade, held that a patent obtained for the same was invalid; and a rule was discharged for the new trial of an action for its infringement in which the defendant had obtained a verdict on the plea denying that the invention was new.

This was a rule nisi to set aside the verdict for the defendant and for a new trial of this action, which was brought for the infringement of a patent for manufacturing by means of manganese and carbon welding steel from common iron, and to which the defendants had pleaded denying that the invention was new. On the trial it appeared that the invention claimed by the plaintiff had been used by five firms in their trade.

Sir F. Kelly, Deighton, and T. Jones showed cause against the rule, which was supported by the Attorney-General and Webster.

The Court said, that the Statute of Monopolies gave a privilege of monopoly for a certain time to the true inventor, and the question was, whether the plaintiff was such in respect of the present invention. It appeared the plaintiff's invention had been used by five firms in the way of their trade, and therefore there had been a public use of the process, and the patent which had been afterwards taken out by the plaintiff was void. The rule for a new trial would therefore be discharged.

Court of Common Pleas.

Wallis, resp., v. Manchester, Sheffield, and Lincolnshire Railway Company, app. Nov. 11, 1853; Jan. 23, 1854.

COUNTY COURT APPEAL.—LIABILITY OF RAILWAY COMPANY FOR HORSES STRAYING FROM HIGHWAY ON TO LINE.

Two horses belonging to the plaintiff strayed

into a highway through a gate which was left open, and thence into the station yard of a railway company, and through an opening on to the line, and were killed: Held, reversing the decision of a County Court, that the railway company were not liable for their value under the 8 Vict. c. 20.

THIS was an appeal from the decision of the Lincolnshire County Court, in a plaint to recover the value of two horses which were in the plaintiff's field and had strayed into the high road, and thence to the defendants' station yard at Torkiey, the gate of which was constructed to swing backwards and forwards and close itself, but which was propped open, and through an opening in the fence on to the line of railway, and had been killed by the passing of a goods' train. The plaintiff obtained a verdict with 35*l.* damages.

Addison for the defendants, in support of the appeal, cited *Fawcett v. York and North Midland Railway Company*, 16 Q. B. 610; *Ricketts v. East and West India Docks and Birmingham Junction Railway Company*, 12 C. B. 160.

Gray, for the plaintiff, contra, referred to 8 Vict. c. 20, under which they were bound to fence off their railway, and to *Barnes v. Ward*, 9 C. B. 392; *Davies v. Mann*, 10 M. & W. 546.

Cur. ad. vult.

The Court said, that s. 68 of the Railway Clauses' Act only applied where the highway was adjoining land not taken for the use of the railway, and according to *Ricketts v. East and West India Dock Company*, the company were only bound to keep up fences against the cattle of parties occupying land adjacent to their railway. In the present case, the cattle were straying on the public road, and were not occupying it within the meaning of the Act—and the appeal must therefore be allowed with costs.

Court of Exchequer.

Arnold v. Hamel. Jan. 14, 1854.

ACTION AGAINST SOLICITOR OF THE CUSTOMS.—NOTICE OF ACTION.—EVIDENCE AS TO BONA FIDES.—NONSUIT.

A rule was made absolute for the new trial of an action against the solicitor of the customs, where the Judge had directed a nonsuit on the ground of want of notice of action, under the 8 & 9 Vict. c. 87, s. 117, without allowing the plaintiff to go into evidence on the question—whether he had acted bona fide in the belief he was acting in the execution of his office.

THIS was a rule nisi, obtained on Nov. 5 last to set aside a nonsuit and for a new trial. The action was brought for false imprisonment, and for work and labour and journeys and attendances as a witness, to which there were pleas of not guilty and *non assumpsit*. The plaintiff had been committed to prison on proceedings against him for buying "sweepings" from the

London Docks, and had been promised to be set at liberty on assenting to give evidence for the Crown, but had been, by the authority of the defendant, who was the solicitor to the Customs, taken and detained for nearly a year on board a ship of war at Sheerness while the informations against the Dock Company were proceeding. On the trial, before *Pollock*, L. C. B., at the sittings after Trinity Term last at Guildhall, an objection was taken, and allowed, that the acts in question were performed by the defendant in the execution or by reason of his office, and that he was entitled to notice of action under the 8 & 9 Vict. c. 87, s. 117;¹ and the plaintiff was not allowed to go into evidence as to whether the defendant acted as solicitor or *bond fide* believed he was so acting, but a nonsuit was directed.

Attorney-General, Sir F. Thesiger, and J. Wilde, showed cause; E. James, Grove, and Hawkins, in support.

The Court said, that the rule must be made absolute for a new trial.

Nowell and another v. Mayor, &c., of Worcester. Jan. 18, 1854.

ACTION AGAINST LOCAL BOARD OF HEALTH TO RECOVER FOR CONSTRUCTING BRIDGE.
—PLEA UNDER 11 & 12 VICT. C. 63, S. 85.
—DEMURRER.

To an action against a local board of health for constructing a bridge, the defendants pleaded that no estimate in writing had been obtained from their surveyor under the 11 & 12 Vict. c. 63, s. 85, before the contract, and that it was therefore void: Held, that the plaintiff was notwithstanding entitled to recover, and a demurrer to such plea was allowed.

THIS was an action on a deed whereby the defendants, as the local board of health, contracted to pay a sum of 474*l.* to the plaintiffs for constructing a bridge within six weeks after the certificate of their architect, to which they pleaded that the provisions of the 11 & 12 Vict. c. 63, s. 86,² had not been complied with, and that the contract was therefore void.

Gray, for the plaintiffs, appeared in support of a demurrer to this plea; *Phipson* for the defendants, contra.

The Court said, the words of s. 85 gave

¹ Which provides, that no process is to be sued out against "any officer" "of the Customs or Excise, or against any person acting under the direction of the Commissioners of her Majesty's Customs, for anything done in the execution of or by reason of his office," until one calendar month next after notice given.

² Which provides, that "before contracting for the execution of any works under the provisions of this Act, the said local board shall obtain from the surveyor an estimate in writing as well of the probable expense of executing the works in a substantial manner as of the annual expense of repairing the same."

authority to contract, but that its proviso was only directory and could not possibly deprive the plaintiffs of their contract under the present deed, and the defendants would pay the plaintiff the amount contracted for and reimburse themselves out of the rate. The demurrer to the plea would therefore be allowed, and judgment be for the plaintiffs.

Court of Criminal Appeal.

Regina v. Burton. Jan. 28, 1854.

CONVICTION FOR STEALING GOODS.—PROOF OF IDENTITY WITH PROSECUTORS' GOODS.

A conviction was affirmed against the prisoner for stealing pepper from a dock company, where he was discovered by an officer coming out of a room in which pepper was stored, and had no business there, and had thrown the pepper away and said, "I hope you will not be hard on me,"—notwithstanding the identity of the pepper thrown down by the prisoner with that in the room could not be shown.

THIS was an indictment of the prisoner for stealing a quantity of pepper, and it appeared that one of the officers of the dock company where he was employed had stopped him on seeing him come out of a room in which he had no right to be, and that the prisoner had said, "I hope you will not be hard on me," and had thrown away the pepper. The Assistant Judge, at the Middlesex Sessions, had overruled an objection that as the pepper could not be proved to have been stolen, an acquittal should be directed.

Ribton for the prisoner.

The Court said, that the conviction must be confirmed.

Regina v. Gill. Jan. 28, 1854.

CONVICTION FOR EMBEZZLEMENT. — SERVANT TAKING MONEY MARKED BY MASTER.

A conviction was affirmed against the servant of a publican for embezzling certain marked money, although it appeared the money belonged to the publican, who had employed a friend to pay the same for articles purchased, with a view of testing the servant's honesty.

THE prisoner was servant to a publican, and had taken from the till certain marked money, which his master had employed a person to pay for articles purchased, with a view of testing the prisoner's honesty. The money, however, belonged to the master. On the trial at the Middlesex Sessions, the prisoner was convicted of embezzlement.

Clarkson for the prosecution.

The Court said, that in accordance with *Re v. Headge*, 2 Leach, 1033; R. & R. 160, the conviction must be affirmed.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 11, 1854.

NEW COURTS OF LAW.

PROGRESS OF THE MEASURE.

THE plan for the proposed new edifice to be placed between Lincoln's Inn and the Temple for the Courts of Law and Equity, and their several officers, has been received with almost universal approbation. As already stated, the Prime Minister, the Lord Chancellor, and the Chief Commissioner of Public Works, readily signified their approval of the proposition. We understand that the Chancellor of the Exchequer, the Home Secretary, the Master of the Rolls, and the Solicitor-General have also expressed a very favourable opinion of the measure.

We believe that the Benchers of Lincoln's Inn and of the Temple will likewise support it, and the general feeling of the authorities and the Profession is strongly in favour of the site suggested in the petition of the Incorporated Law Society, namely, on the borders of the cities of London and Westminster, bounded by the Strand and Fleet Street on the south, and by Carey Street on the north, and with a covered arch in the place of Temple Bar, uniting the two Temples with the Courts and Lincoln's Inn: thus will be formed one of the greatest improvements in the very centre both of the metropolis and the law district.

A movement has been made by the owners of the houses in Lincoln's Inn Fields in favour of the centre of their spacious garden; but, though a resolution on that subject was passed at a meeting of the trustees, it was well observed by Professor Owen, that the Public, on sanitary grounds, would effectually nullify any resolution tending to the destruction of a space so fortunately preserved in the centre of London.

The calculation that expense would be saved by destroying the gardens of the largest square in the metropolis is to a considerable extent erroneous, for were the mere site obtained gratuitously, it is evident that a very large outlay must be incurred in forming new approaches to the Courts. Notwithstanding the noble extent of the ground which it is proposed to sacrifice, it is wretchedly deficient in the avenues which lead to it. Several new streets would be unavoidable. The Fields in their present state are well adapted for private Chambers, and when the Courts are within a few yards of them, they would become still more eligible for professional business; and we submit that the worthy trustees would better discharge their duty by supporting the site between Lincoln's Inn and the Temple than by an opposition which might possibly delay the progress of an improvement so manifestly beneficial both to the Public and the Profession. They may rest assured that they cannot succeed; and on reconsideration we trust they will join in promoting the plan of the Law Society.

Presuming that the Government will introduce a Bill for carrying the plan into effect, a question may arise—Whether it can be effectually proceeded with in the present Session? If it were a private Bill, the usual notices required by the Standing Orders must of course be given; but a Bill brought in by the Government for a public purpose may not be subject to the ordinary rules. The time has arrived when the erection of new Courts has become not a matter of choice but of necessity. The Judges are constantly suffering personal inconvenience, and actual danger to their health, by the disgraceful state of the present Courts; and one of the Judges has declared that he will not again sit in the

"hole and corner," denominated the Bail Court. It is of course in the power of Parliament to dispense with formal notices, especially as the proposed site of the Courts has long been publicly notified, and none of the parties can be taken by surprise. At all events, the length of the notice might be shortened, and compensation awarded in cases of peculiar inconvenience; or a Bill might be brought in to determine the site and the "ways and means" of defraying the expense,—leaving the details for the early part of the next Session.

Of the urgency of the measure it is scarcely necessary to speak. There are only five regular Courts at Westminster, namely—those of the Lord Chancellor, the Vice-Chancellor, and the three Common Law Courts. The Courts required are no less than fifteen, viz. :—For

1. The Lord Chancellor.
2. The Lord Justices.
3. The Master of the Rolls.
4. Vice-Chancellor Kindersley.
5. Vice-Chancellor Stuart.
6. Vice-Chancellor Wood.
7. The Queen's Bench.
8. The Common Pleas.
9. The Exchequer.
10. }
11. } Nisi Prius Courts.
12. }
13. Practice and Bail Court.
14. Court of Error.
15. Criminal Appeal.

These are exclusive of the Bankruptcy and Insolvency Courts. In addition to all the above Courts there must be provision made for—

16. A Probate Court, and
17. A Divorce Court.

Then, connected with the Equity Courts, should be four sets of Chambers for the Master of the Rolls and the three Vice-Chancellors, and three sets of Chambers at least for the Common Law Judges. Formerly each of the 12 Judges had his own separate chambers.

Besides the public Courts and the Judges' Chambers, it is necessary that the following principal officers of the Courts, and their clerks, should have convenient rooms for the despatch of their business :—

In Chancery.

The Accountant-General and 25 Clerks.
Eleven Registrars, and 14 Clerks, besides Stationers.

The Master of Reports and three Clerks.
Two Examiners and Clerks.

Four Clerks of Records and 16 Clerks, besides Stationers.

Six Taxing Masters and Clerks.
Clerks of Enrolments and three Clerks.
Two Masters in Lunacy and seven Clerks.
Registrar in Lunacy and four Clerks.
[There are several other officers of less importance.]

In the Queen's Bench.

Five Masters and 23 Clerks.
Marshal and Associate.
Error and Outlawry.
•Crown Office, &c., &c.

Common Pleas.

Five Masters and 11 Clerks.
Marshal and Associate.
Registrar of Judgments.
Registrar of Acknowledgments of married women, &c., &c.

Exchequer of Pleas.

Five Masters and 19 Clerks.
Associate and Marshal.
Queen's Remembrancer and Clerks, &c., &c.

CHANCERY AND ECCLESIASTICAL COMMISSION.

SUMMARY OF SECOND REPORT.

I. *As to the Testamentary Jurisdiction generally as affecting Real and Personal Estate.*

1. THAT the testamentary jurisdiction of the Prerogative Courts of the Archbishops of Canterbury and York, and of all other Courts, Ecclesiastical, Manorial, or otherwise, exercising testamentary jurisdiction in England or Wales, should be abolished.

2. That all questions of the validity of wills of real and personal estate should fall under the same jurisdiction.

3. That such jurisdiction should be exercised by a single Court.

4. That a Court should be established for the purpose of exercising jurisdiction in matters testamentary.

5. That the Court should be a Superior Court of Record, and that the proceedings therein should be in the name of her Majesty.

6. That persons interested under wills of real estate should be under the same obligation of proving such wills as now exists with respect to wills of personal estate.

7. That the benefit which attaches to probate in the case of personal estate should be extended to devises of real estate.

8. That after a will has been proved, the title of a devisee under it should not be open to question in other Courts.

9. That it is expedient that proceedings should be taken before the Testamentary Court for the purpose of establishing intestacy as to real estate.

10. That such Court should have power to grant certificates of intestacy, which should be conclusive in all other Courts.

II. As to the Constitution of the proposed Testamentary Court.

1. That the Court to be established should be called her Majesty's Court of Probate, and should hold its sittings at such place in London or Middlesex as her Majesty shall appoint.

2. That there should be but one Judge of the Court.

3. That the qualification of the Judge of the Court of Probate, should be a standing of 10 years as Advocate of the Court of Arches, or serjeant, or barrister-at-law.

4. That the Judge of the Court should be appointed by the Crown, and should hold his office during good behaviour, and be removable upon an address by both Houses of Parliament.

5. That, in order to provide for the occasional illness of the Judge, power should be given to the Crown to appoint some other person to act temporarily as Judge, whenever the occasion should arise.

6. That the Judge should have power during vacations and on other special occasions to appoint, with the consent of the Lord Chancellor, some competent person to transact the necessary business incident to the passing of probates and letters of administration, in like manner as such business is now transacted by surrogates, and other urgent business.

7. That the officers of the Court should be appointed by the Judge of the Court, with the approbation of the Lord Chancellor.

8. That the subordinates of these officers should be appointed by the officers themselves, with the approbation of the Judge.

9. That the present deputy registrars of the Prerogative Court of Canterbury, and the assistant clerks of seats, and other such officers of that Court as are engaged in and competent to the performance of active duties should become officers of the Court of Probate, and perform such duties as shall be assigned to them respectively by any general rules or orders of the Court.

10. That subject to this provision, the officers of the Court of Probate should be selected from advocates or barristers, or persons practising as proctors or solicitors, or from other competent persons now engaged in the performance of active duties in some Court exercising testamentary jurisdiction.

11. That the Judge and officers of the Court should respectively be paid wholly by salaries.

12. That no officer of the Court of Probate should be allowed directly or indirectly, to practise on his own account.

13. That the duties of the officers of the Court should be discharged in person and not by deputy.

14. That the registrars of the Court in London and Commissioners in the country should be empowered to take affidavits and transact other formal business, now performed by surrogates.

15. That the Accountant-General of the

Court of Chancery should be the Accountant-General of the Court of Probate.

16. That proper provisions be made for enabling him to act under the direction of the Court of Probate with respect to funds subject to the jurisdiction of that Court.

III. As to the Jurisdiction and Powers of the Court of Probate.

1. That the Court should have full and exclusive jurisdiction to determine all questions as to the validity of any instrument purporting to be testamentary, whether relating to real or personal estate, and whether or not made in execution of any power.

2. That the Court should have authority as to personal estate to grant probates of wills and letters of administration as heretofore used in the Prerogative Court of Canterbury, but not confined as heretofore to the province of Canterbury.

3. That the Court should have power, as to real estate, to grant probates of wills and certificates of intestacy.

4. That probates, letters of administration, and certificates of intestacy should not be subject to be questioned or disputed in other Courts.

5. That the Court should have the power to determine any question of law, equity, or fact, which may be necessary to be determined for the purpose of deciding any question of testacy or intestacy, or the right to any grant of administration, but not further or otherwise.

6. That in cases of total intestacy as to personal estate, or in cases where there is no executor willing and competent to take probate, the Court should have power to appoint a proper person to be the administrator of the personal estate if and when it shall appear to the Court to be necessary or proper so to do, notwithstanding the title or claim of the husband, wife, next of kin, legatees, creditors, or other person or persons.

7. That the Court should have power to appoint administrators of personal estate pending any suit in the Court touching the validity of any testamentary instrument affecting the same or the grant of letters of administration.

8. That administrators so appointed should have such of the rights and powers of general administrators as the Court shall in its discretion think fit, other than the right of distributing the estate, and should act under the direction of the Court.

9. That the Court should possess the power of appointing receivers of real estate pending any suit in the Court touching the validity of any testamentary instrument affecting the same.

10. That receivers so appointed should be under the same obligation of giving security, when required by the Court, and of accounting, and have the same powers, rights, and protection as receivers appointed by the Court of Chancery, and should act under the direction of the Court of Probate.

11. That when the Court is called upon to exercise the special powers of granting admini-

stration before recommended, it should in proper cases have the power to make such grant to a person immediately accountable to the Court, and in effect to be an official administrator.

12. That provision should be made for the deposit and security of the moneys received by official administrators and by receivers of the rents of real estates.

13. That the Court should have power to allow official administrators and receivers a reasonable remuneration out of the estate, such remuneration to be fixed by the Court.

14. That this remuneration to official administrators should be given, if the Court so thinks fit, when it appoints a general administrator not having a legal title, as well as to administrators appointed for a temporary purpose.

15. That it should not be competent to a person to sue or act as executor without having obtained probate, after the grant of any administration granted by the Court.

16. That when any such administration shall have been granted no person should have power to sue, or prosecute any suit, or act as executor until such grant shall have been by act of the Court revoked or declared to be determined.

17. That whenever it may have become necessary to commence actions or suits in other Courts by, or against administrators temporarily appointed, the determination of the administration by act of the Court should not prejudice the proceedings; but that they should be continued by or against, any subsequent legal personal representative.

18. That the power of the Court of Chancery to appoint receivers *pendente lite*, in cases falling within the jurisdiction of the Court of Probate, should cease.

19. That the jurisdiction which the Ecclesiastical Courts have possessed of compelling executors and administrators to exhibit an inventory and statement of the assets of deceased persons, and of enforcing the payment of legacies, or otherwise administering the estates of deceased persons, should cease, and not be conferred on the Court of Probate.

20. That, with this exception, all powers and jurisdiction in matters testamentary, now exercised by the Prerogative Court of Canterbury, or any other existing Testamentary Court, should be exercised by the Court of Probate throughout England and Wales.

21. That the determination of the Court on all questions should be binding and conclusive on all parties to the proceedings in all other Courts and tribunals.

22. That the Court should have the same power and control over all wills and testamentary instruments, or papers purporting to be testamentary, as the Prerogative Court of Canterbury now has with respect to matters within its jurisdiction.

23. That the Court should have jurisdiction to order the removal, cancellation, or restoration of any will or part of a will which may be

shown to have been forged, altered, or tampered with.

IV. As to the District Offices.

1. That district offices, through which probates or administrations may be taken out in cases of small properties, should be established in different parts of the country as branches of the Court, each of such districts to comprise a county or counties, or some known division of a county or counties.

2. That the number of districts should be not less than 20, or more than 30.

3. That, unless some more convenient arrangement can be suggested, the districts should be arranged, and the offices established, in the mode and at the places specified in the schedule.

4. That the district officers, as well as the officers of the Court of London, should be paid wholly by salaries and not by fees.

5. That for each district there should be a registrar, to be appointed by the Lord Chancellor, but to be an officer of the Court of Probate, and subject to the direct and immediate control of that Court, and with the qualifications, and subject to the restrictions, before mentioned as to officers of the Court.

6. That the business preliminary to the seal being affixed should be transacted in the district offices, but that the final act of affixing the seal to the probate, or letters of administration, should be the act of the Court of Probate itself, and that the documents should be transmitted by the district registrar to the Court in London for that purpose.

7. That there should not be any re-investigation of the title, but that the officer whose duty it will be to affix the seal should act upon the authority of the district registrar in like manner as he would upon the authority of the registrar in London.

8. That the grant should be entered among the other grants, and indexed accordingly.

V. As to Counsel in the Court.

That advocates of the Court of Arches, as well as serjeants and barristers-at-law, should be at liberty to practise as counsel in the Court.

VI. As to Practitioners in the Court.

1. That the proctors should be permitted to have the exclusive conduct of common form or non-contentious business in the Court of Probate in London.

2. That such powers as are now exercised by his Grace the Archbishop of Canterbury with respect to the admission of proctors, so far as respects testamentary business, should be transferred to the Judge of the Court of Probate.

3. That any proctors now practising in the country should, subject to the approbation of the Judge, be admitted to practise in the Court of Probate.

4. That the Judge of the Court of Probate should nominate a competent number of proctors, attorneys, or solicitors to practise in each

district office, and that no other persons should be allowed to practise therein.

5. That contentious business should be open to attorneys or solicitors on being admitted in the Court, as well as to proctors.

VII. As to Procedure in the Court of Probate generally.

1. That the distinction between probate in common form and probate in solemn form should be continued.

2. That the executor or administrator should, in the affidavit necessary for obtaining probate or administration, state to the best of his ability the nature and description, as well as the amount of the personal property.

3. That, with this additional provision, probates and letters of administration of personal estate should be granted by the Court of Probate in common form as heretofore used in the Prerogative Court of Canterbury.

4. That the probate, though taken out by the executor, should, in cases of wills operating both on real and personal estate, enure for the benefit of the devisees, so that any devisee, upon production of the probate under the seal of the Court, or upon due proof of such probate having been granted, would have a conclusive title as devisee in all other Courts and before all other tribunals.

5. That any devisee should have power to cite the executors, and also residuary and other legatees, to prove the will or take administration with the will annexed; and that upon their default the Court should have power to grant a probate of the will reciting such default, the effect of which would be to perfect the devisee's title, but to leave the personal estate unrepresented unless the Court should think fit to appoint an official administrator, but that application might subsequently be made to the Court by the executor or other parties interested in the personal estate for letters of administration with the will annexed, in which case they should be granted in the usual manner, but reciting or referring to the previous probate.

6. That in cases of wills operating on real estate only, probate should be granted as in common form upon the application of any devisee on behalf of himself and the other devisees, and should enure for the benefit of all the devisees.

7. That in every case in which a testamentary instrument, whether constituting the whole or a portion of the deceased's last will, may directly or indirectly affect personal estate, letters of administration of the personal estate should not be granted without the whole will, whether consisting of one or more instruments, being annexed to the grant.

8. That whenever letters of administration with the will annexed are applied for by a person entitled to a grant, they should enure for the benefit of the devisees as in the case of a probate, and should in all respects have the effect of a probate.

9. That if no such letters be applied for, a

devisee should have power to cite the next of kin, or other persons primarily entitled to take out administration, and that on their default, the Court should grant a probate, which should have precisely the same effect as a probate granted to a devisee on citing the executors of legatees.

10. That where a testator leaves two testamentary instruments or sets of instruments, one affecting real estates only, and the other personal estates only, probate should be granted of each separately.

11. That the expense of the probate of a will by or at the instance of a devisee should be borne by the devisee applying for such probate.

12. That certificates of intestacy as to real estate should issue upon the application of the heir, or any one of the heirs, or any person showing an interest, and enure for the benefit of all the heirs and all persons having an interest.

13. That such certificate should be granted upon affidavit.

14. That caveats against probates of wills or grants of administration should be lodged in the Court of Probate, according to the existing practice of the Prerogative Court of Canterbury.

15. That the entry of such caveats may be made in the district offices as well as in the Court in London, and should be considered as common form business.

16. That proceedings under caveats should be such as heretofore used in the Prerogative Court of Canterbury, and should continue to be considered as common form business until, upon the caveat being warned by the proctor of the party propounding the will or proposing to take out letters of administration, an appearance shall have been entered in the Court of Probate by the opposite party.

17. That the entry of such appearance should be deemed a contentious proceeding, capable of being taken by any proctor or solicitor of the Court.

18. That a similar course of proceeding with respect to caveats should be adopted in reference to certificates of intestacy.

19. That the practice of the Prerogative Court of Canterbury as to citing parties for the purpose of having wills established or proved in solemn form, or letters of administration granted, or probates or letters of administration recalled, should be continued and applied to cases of real estate and to certificates of intestacy, heirs being on the same footing as next of kin, and devisees on the same footing as legatees now are.

20. That any person propounding any testamentary paper for probate, or applying as heir for a certificate of intestacy, should be at liberty to cite whom he shall think fit, the Court of Probate having a power to require such other persons, if any, to be cited as it may think necessary.

21. That citations or other processes calling upon executors or other persons to accept or refuse probate or administration, or to show

cause why it should not be granted to the person suing out the process, should be deemed common form business, and issued from and made returnable in the district office as well as the Court in London.

22. That subsequent proceedings, including the grant of probate or administration, when the grant follows as of course and to either, party, according to the tenor of the citation should also be treated as common form business.

23. That if any proceedings of a contentious nature should ensue, they should be taken only in the Court in London.

24. That the practice of the Prerogative Court of admitting an opponent to be a contradictor, without admitting his title, be adopted in the Court of Probate.

VIII. *As to Probate and Administration through District Office.*

1. That application may be made to the district office for probate or letters of administration only in the case in which the testator or intestate may have had a fixed place of abode at the time of his death within the district, and in which his personal property is sworn under 1,500*l*.

2. That there should be an affidavit as to the residence of the deceased and the amount of his property.

3. That this affidavit should be conclusive, and that the grant made through the district office should not be liable to be impeached or recalled on the ground that the deceased had no such fixed place of abode as alleged, or that his property exceeded the prescribed amount.

4. That the probate or letters of administration, being under the seal of the Court of Probate and not of any local tribunal, should be as valid as a grant made in London.

5. That provision shall be made for a daily transmission and return by post of documents between London and the district offices.

6. That, if it should be thought advisable, wills should remain for a limited time in the district office, for the inspection and examination of parties interested, but should ultimately be sent up to London.

7. That indexes should be deposited in the district offices, corresponding with the index in London, so that searches may be made in the country without the necessity of resorting to the London office.

8. That no contentious testamentary business should be transacted in the district offices.

9. That where the testator or intestate has had no fixed place of abode at the time of his death, or where the death is not stated to have occurred in England, the application for probate or letters of administration should be made to the Court of Probate in London.

10. That it should not be compulsory on any party to apply to a district office for probate or letters of administration, but that in all cases it should be competent to the Court of Probate in London to grant probate or letters of administration wherever the residence of the deceased may have been, and whatever the amount of the property.

11. That certificates of intestacy should not be applied for at the district office; but that in every case they should be applied for in London.

12. That means for taking the requisite oaths and complying with other prescribed formalities should be provided in the country; but that when the amount of property is above the prescribed limit, the documents should be examined and prepared by the officers in London, and that the probate or administration should be issued at once from the central Court.

IX. *As to Pleadings, Evidence, and Practice in the Court of Probate.*

1. That the system of pleading at present prevailing in the Prerogative Court should be abolished.

2. That wills should be propounded in a simple allegation of the execution and attestation of the instrument and of the sanity of the testator.

3. That claims to administration on intestacy should be made in a simple form of allegation of the intestacy of the deceased, and of the character in which the claimant claims such administration.

4. That in other cases the preliminary pleadings should also be in a simple form.

5. That, except by leave of the Court, no further or other pleadings than such preliminary simple allegations as above suggested on the part of the party proponent should be entered into by him, and no pleadings of any kind by the party opposing.

6. That it should be obligatory on the Court not to give such leave in cases in which the validity of the instrument in dispute depends upon the execution or attestation of the instrument, or upon the sanity of the testator, or in any case for the purpose of pleading matters of evidence.

7. That in other cases the Court should have the power to authorise or require either party to bring in such statement of the case as it shall see fit.

8. That each party should be under the obligation of bringing in, as the first step in his proceeding, a full affidavit as to testamentary papers in the form now used in the Prerogative Court, and technically called "an affidavit of scripts."

9. That each party should have power to exhibit interrogatories for the examination of the other, as adopted in suits in the Court of Chancery under the recent alterations in the practice of that Court, and to enforce production of documents, as used in the same Court.

10. That upon application made to the Court, founded upon affidavit, stating that there are reasonable grounds for concluding that any person is in possession or has the knowledge of any testamentary paper made or purporting to be made by or for the deceased in the cause, the Court shall have power to decree a monition against such person, who must make a return thereto on oath, and bring in the paper if he has possession or control over it.

11. That the evidence should be adduced and the examination of witnesses conducted

according to the mode in use in the Court of Chancery.

12. That the Court should have a discretionary power to examine witnesses orally before the Judge.

13. That it should also have power to summon a jury for the trial of issues, or to direct issues to be tried at law.

14. That in every case it should be in the discretion of the Court whether the question should be sent to a jury or not.

15. That power should be given to the Judge of the Court of Probate, with the approbation of the Lord Chancellor, to frame general rules and orders for the regulation of the process and practice of the Court, and particularly for defining what portion of the business is to be considered as common form or non-contentious business, to be transacted exclusively by proctors, or in the district offices, by persons appointed to act as proctors.

16. That, with the exceptions above pointed out, the practice of the Court, except so far as altered by general orders, should be that at present existing in the Prerogative Court of Canterbury.

X. Limitation of Time.

1. That no proceeding should be taken to establish a will or recal probate after the expiration of twenty years from the date of the certificate of intestacy, or grant of administration or probate.

2. That, notwithstanding the general rule, any devisee or heir should be at liberty to proceed to establish a will or recal probate, but as to his own interest only, within the time within which, assuming his estate to be an estate at law, he might bring an ejectment.

3. That a similar rule should prevail with reference to personal estate.

4. That a similar period should be fixed, after which an administration, in case of intestacy, should not be liable to be revoked.

5. That parties should be authorised to proceed in cases of fraud after the expiration of the limited period, provided they obtain the special leave of the Court for the purpose, but not otherwise.

XI. Appeal from the Court of Probate.

1. That all orders and decisions of the Court should be subject to rehearing before the Court of Appeal in Chancery.

2. That an appeal should lie from the decision of that Court to the House of Lords.

3. That a party dissatisfied with the decision of the Court of Probate should not be bound to go to the Court of Appeal in Chancery, but should be at liberty to appeal direct to the House of Lords, if he should think fit.

4. That the Court of Appeal in Chancery should be at liberty to admit fresh evidence, if it should seem necessary to the purposes of justice to do so, according to the practice now prevailing in the Ecclesiastical Courts, and before the Judicial Committee of the Privy Council.

5. That a time should be limited within which an appeal should be presented.

6. That an appeal should not stay proceedings in the Court of Probate, but that the Court appealed from, as well as the Court of Appeal, should have power to stay the proceedings if it should so think fit, and on such terms as it may think fit.

7. That the application to stay proceedings should be made, in the first instance, to the Court which pronounced the order or decision appealed from.

8. That upon the establishment of the Court of Probate the jurisdiction of her Majesty in Council in matters testamentary arising in England or Wales should cease, except as to matters which may then be pending there.

XII. Transfer of Existing Suits in Matters Testamentary.

That suits which upon the establishment of the Court of Probate may be pending in other testamentary Courts in matters testamentary, should all be transferred to the Court of Probate, to be dealt with according to the practice now existing in the Prerogative Court of Canterbury, except so far as the Court may consider it expedient in any particular case to adopt the practice proposed to be followed by the Court of Probate, in which case power should be conferred on the Court to do so.

XIII. Fees.

1. That all fees taken for the despatch of testamentary business, whether office fees or proctorial fees, should be reconsidered and settled.

2. That an effective system of taxation of proctors' bills as between themselves and their clients should be provided.

XIV. Real Representative.

1. That it is expedient that some Court should be invested with a discretionary power to appoint upon summary application some person or persons to be a representative or representatives of the real estate of any person deceased, who should have power to sell and convey such estate, and to receive the rents and profits thereof, and to give discharges for the purchase moneys, rents, and profits of such estate, and to raise money by mortgage thereof, such appointment to be made upon the application of some person interested in the estate, and to be confined to such real estate of the deceased as may not be vested in trustees in trust for sale, with power to give discharges to purchasers.

2. That the Court to be intrusted with the power of appointing a real representative to the extent recommended should be the Court exercising jurisdiction to administer the estates of deceased persons, and not the Court of Probate.

XV. Compensation.

1. That, subject to the provisions of the Act of 6 & 7 William 4, c. 77, sec. 25, the Acts extending the same, and the Act of 10 & 11 Vict. c. 98, s. 100, the judges and registrars of the various Courts now exercising testamentary jurisdiction should be indemnified against the loss which they will sustain by the abolition of

the testamentary jurisdiction; but that such of them as have exercised their respective offices by deputy should not receive compensation in respect of the portion of their profits which the deputy has received.

2. That, subject to the provisions of the above-named Acts, the deputies should receive compensation for the loss of their emoluments.

3. That if the course recommended of preserving the common form business to the proctors in Doctors' Commons should be followed, they should not receive any compensation.

4. That the same rule should not apply to the proctors now practising in the country, and who may not be adequately indemnified by being authorised to practice in the district offices.

5. That if Parliament should see fit, compensation should be made to other persons who may have equitable claims thereto, if the measures suggested should be adopted.

6. That unless Parliament should think fit to provide such compensation from the Consolidated Fund, a system of fees should be established in the new Court sufficient to produce the sums which may be required; and that these fees should be reduced from time to time as the claims for compensation are satisfied.

XVI. *As to one Probate being sufficient for the United Kingdom.*

That the effect of probate should be limited within the jurisdiction of the tribunal by which it is granted.

NOTICES OF NEW BOOKS.

An Action at Law: being an Outline of the Jurisdiction of the Superior Courts of Common Law; with an Elementary View of the Proceedings in Personal Actions and in Ejectment. By ROBERT MALCOLM KERR, Barrister-at-Law. London: Bond; Wildy & Sons; and Amer. Pp. 351.

MR. Kerr, who is favourably known to the Profession for his able edition of the Common Law Procedure Act, with very ample Annotations, has rendered a further good service, both to the practitioner and the student, by the compilation of the present volume, comprising an elementary and comprehensive view of the proceedings in an action at law. The work will be peculiarly useful to the articulated clerk preparing for his examination, and especially to that larger portion of them who have not had the advantage of a year's experience in the office of a London agent, or who have been articulated to solicitors whose chief business is that of conveyancing. Nevertheless, they must acquire an adequate knowledge of the jurisdiction and practice of the Common

Law Courts to entitle them to a certificate "that they are fit and capable to act as attorneys."

It is to be feared that the large number of candidates who occasionally fail in their attempt to pass the examination, have not sufficiently considered, that to justify the examiners in granting a certificate, it is not sufficient that the applicants for admission on the Roll have mastered one branch of practice. They must acquire themselves satisfactorily in the three principal branches of Common Law, Equity, and Conveyancing. Mr. Kerr's volume will be of much assistance in the first-named department, and it is sufficiently comprehensive, though concise, to instruct the student in many of the points which are usually comprised in the examination.

Mr. Kerr has clearly and concisely traced the steps of an action according to the altered forms and course of proceeding under the Common Law Statute of 1852, and the Rules of Practice and Pleading framed in pursuance of its enactments. The Author has judiciously included in his work a review of the constitution of the Superior Courts, and their jurisdiction in the redress of "private injuries," according to the method and arrangement of Blackstone, some of whose admirable language will be found in Mr. Kerr's pages.

The Introduction to the Work treats, like Blackstone, of "private wrongs," and the different modes of redress:—1st. By act of the parties. 2nd. By operation of Law. 3rd. By suit in Court.

The First Part comprises the Superior Courts of Common Law and their jurisdiction; the appellate Courts; and the auxiliary tribunals of Nisi Prius, &c.

The Second Part treats of:—1. Injuries cognizable in Courts of Common Law. 2. Injuries that affect the rights of persons. 3. Injuries that affect the right to real property. 4. Injuries that affect the right to personal property.

The Third Part describes:—1. The sittings and proceedings of the Courts. 2. Process, arrest, &c. 3. The writ of summons. 4. Service of the writ. 5. Judgment by default. 6. Appearance. 7. Pleadings. 8. Demurrer. 9. Trial. 10. Judgment. 11. Proceedings after judgment. 12. Execution.

LAW OF ATTORNEYS.

APPEAL FROM JUDGE'S ORDER FOR TAXATION OF BILL OF COSTS AFTER PAYMENT.—AMOUNT OF BILL.

An order had been made at Chambers by *Martin, B.*, for the taxation of the bill of costs of *Mr. J. H. Dearden* under the 6 & 7 Vict. c. 73, s. 41, after payment.

On a motion for a rule nisi to rescind the order, the following cases were cited:—*In re Colquhoun*, 9 Beav. 146; *In re Harrison*, 10 Beav. 57; *In re Wells*, 8 Beav. 416; *Esparte Barton*, 22 Law. J., Ch., N. S., 670; *In re Neate*, 10 Beav. 181; *In re Harding*, 10 Beav. 250; *In re Welchman*, 11 Beav. 319; *In re Stirke*, 11 Beav. 304.

Pollock, C. B., said:—"I am of opinion that there ought to be no rule. This is an appeal from a Judge's order, and we ought to take it for granted that he has investigated the circumstances of the case, and that he was of opinion that the special circumstances disclosed required the taxation of the bill in pursuance of the power given for that purpose by the Statute. Now, the gentleman whose bill has been ordered to be taxed, and who comes to us by way of appeal from that order, does not give us the least information as to the amount of his bill; and we do not know whether the amount be 20s. or 50*l.*, or what it is. I am of opinion that, if a learned Judge at Chambers has directed a bill to be taxed, and the matter in dispute does not exceed a few pounds, we ought not to grant a rule which may put the parties to the loss of perhaps 20*l.* for the purpose of setting that decision right, supposing it not to be so. The amount here may not exceed 5*l.*; and I think that the fact, that the gentleman who makes this application does not give any such information, is of itself an amply sufficient reason for not granting a rule." *In re Dearden*, 9 Exch. R. 210.

MANCHESTER LAW ASSOCIATION.

ANNUAL MEETING AND REPORT.

THE Annual General Meeting of the Members of the Association was held on Wednesday, the 11th day of January last, at their Rooms, No. 4, Norfolk Street, when an account of the Receipts and Disbursements (previously audited by two of the Members) was submitted and passed.

The proceedings of this Society, for the last year, were stated in the following Report, which was read by the Honorary Secretary, and unanimously adopted:—

"In presenting the Fifteenth Annual Report to the Members of the Manchester Law Association, the Committee have great pleasure in congratulating the members on its prosperity, and generally with reference to the part the Association has taken in matters of public importance during the past year. There has been an increase in the number of members, and the funds of the Association are in a position to enable the Committee to act with usefulness and effect.

"The most important duties devolving upon the Committee have been those of attending to the many and important measures introduced into Parliament for effecting changes in the law; and the Committee during their year of office have directed their attention to those matters which have effected the Profession and the Public. Their attention was first called to a Bill introduced into the House of Commons by *Mr. George Hadfield*, the member for Sheffield, for making Probates granted in one Consistory Court available in the rest. The principle of the Bill met with the approbation of the Committee, and which, if passed, would have remedied a serious grievance. The honourable member was, however, induced to withdraw the Bill at the request of the Government, who stated they had in contemplation a general measure with regard to Ecclesiastical Courts.

"The *Registration of Assurances*' Bill passed the House of Lords, and was introduced into the House of Commons. Upon a measure so vitally affecting the rights of property, the Committee bestowed the most anxious consideration. The Bill was substantially the same as that attempted to be passed in 1851. The scheme was for the establishment of a Metropolitan Registration to answer the purposes of the whole kingdom, and it provided for the registration of either the original instrument or a copy. In considering the measure, the Committee felt themselves called upon to proceed upon the assumption that some plan of registration would sooner or later be adopted, and their principal objects were to ensure a plan which would secure to the public the greatest advantages with the least practical inconvenience. Whether a metropolitan or local scheme of registration would be the best, was maturely considered—and whether registration should extend to equitable and trust estates, as well as to legal estates, was a question of great importance, and upon which they knew differences of opinion were entertained by members of the profession. The Committee were in favour of local registration, and they considered that such a system would have immense advantages over a metropolitan scheme. Local knowledge is highly valuable, and in many cases absolutely necessary to a correct understanding of questions affecting property and its rights; and

the Committee considered that any plan of registration should therefore be local. It became, however, unnecessary for the Committee to urge these views on the attention of Parliament, for the Bill, as it was framed, was so objectionable in its details that the Committee determined to confine their attention to opposing the particular measure. When it was read a second time in the House of Commons, it was referred to a select Committee of that House, upon which your Committee urged the views entertained by them in opposition to the Bill, and they had the satisfaction of learning that not a single member of the select Committee was in favour of the Bill as it then stood; in consequence of which no further progress was made with the measure, and it did not pass into a law. That a Bill for registration will again be introduced into Parliament is certain, and most probably other measures affecting property and its mode of transfer; and it will require the vigilance and care of the profession to prevent the contemplated changes unsettling those foundations upon which the stability and security of property are founded.

"Another matter which has engaged the attention of the Committee, is the security offered for money lent to *Railway Companies*. It has been usual for these Companies to advertise for loans of money for different terms of years in very considerable, and, in many instances, in very large amounts. It has not always occurred to persons having money to lend, especially in periods of prosperity when money is plentiful, to inquire into the powers which railway companies possess for borrowing purposes. In the various Acts of Parliament by which the numerous companies are regulated, their powers of raising money upon loan are only to be exercised on certain conditions, and with a limit as to the total amount. It is of the utmost importance to the lenders of money that they should ascertain whether the company proposing to borrow has complied with the provisions of the Act of Parliament by which its affairs are governed; for if not in conformity with their powers serious questions may arise how far the company, in its corporate character, is bound by the acts of the directors. It has come to the knowledge of the Committee that railway companies have refused to give information respecting their powers of borrowing, and members of the association have consequently refused to negotiate for loans of money by reason of such information having been withheld. Great injury may be inflicted by railway companies raising money where they have no legal right to borrow, and the Committee respectfully urge upon the Members of the Association to exercise care and caution in negotiating loans on the security offered by public companies.

"The Act of Parliament for increasing and amending the powers and jurisdictions of the *Palatine Court of Chancery*, in the County of Lancaster, has engaged the attention of your Committee; and it has been their anxious endeavour to have rules framed which would be

convenient and inexpensive to the public. It was the opinion of your Committee that the improved jurisdiction of the Palatine Court would facilitate and expedite the administration of justice in this district, and with a view of giving the Court the greatest practical efficiency, they obtained an interview with J. W. Winstanley, Esq., the district registrar, who met them in the most liberal spirit; he proposed to attend in Manchester every Tuesday and Thursday, from ten o'clock to three, and on Saturdays for two hours, with a continuous sitting in case of emergency. The Committee have for the present placed at the disposal of Mr. Winstanley, two rooms at the Association Rooms, in Norfolk Street, for conducting the business of the Court. A deputation from the Committee had an interview with the Vice-Chancellor of the Court, on the proposed arrangement with the registrar, and which met with his entire sanction and approval. In addition to the facilities proposed by the registrar, the Vice-Chancellor consented to hold the sittings of the Court occasionally in Manchester; and the first sittings under this arrangement were held in Manchester in the month of October, 1853, and other sittings will again be held in May, 1854. Arrangements have also been made by which the Vice-Chancellor will hear interlocutory applications at his chambers in London, in the afternoons of the first and third Wednesdays in every month; and cases of *ex parte* motions for injunctions and other applications of a pressing nature will be heard by him at all reasonable times. The Committee cannot but congratulate the Members of the Association on the advantages which must ensue to the administration of justice, by the arrangement made with the learned Judge and Registrar of the Palatine Court, for the despatch of business coming before that tribunal.

"The *Courts of Bankruptcy*, as at present constituted, not having been found to realize the public benefit expected from them, a Commission has been issued by the Crown to enquire and report upon the causes which have led to the decreasing business in those Courts. The Committee received from the Secretary to the Commissioners certain questions to be answered on behalf of the Association. The Committee are of opinion that the decrease of business in those Courts is to be attributed, in a great measure, to the large per centages payable to the chief registrar and the official assignees, and to the fact that a large remuneration is received by the official assignees, upon the supposition that they are qualified to investigate the bankruptcy accounts, and attend strictly to realizing the estate, while the fact is, that no inconsiderable portion of those duties has to be performed either by the creditors assignees, without remuneration, or by a paid public accountant; and the Committee are of opinion, that for these reasons, no increase of business is likely to take place. They recommended that for the bankruptcy business to be transacted in the Manchester Court, there was no necessity for two commissioners, as one

commissioner only sits at a time, and on an average not more than two hours a day. The Committee were of opinion that the duties of the Court could be well and efficiently discharged by one commissioner, one registrar, and one official assignee; and they recommended that the duties of the official assignee should be confined mainly to the office of treasurer of the funds, for which purpose only, in their opinion, is such an officer desirable or useful; the Committee were also of opinion that the office of messenger, as it exists at present, was wholly unnecessary, and that these changes might be made without injuring the interests of the public. The Committee are impressed with the necessity of making the Court of Bankruptcy of greater usefulness than it has hitherto been; and they trust their successors in office will direct their attention to any alterations which may be proposed, so that the Court may be adapted to the requirements of the commercial interests of the large and important district within the jurisdiction of the Manchester Court.

"A Commission has also been issued to enquire with respect to what alterations may advantageously be made in the Statutes and Rules relating to *County Courts*; and a list of questions has been sent to the Committee of the Association, in order that the opinion of the Committee may be submitted to the Commissioners. The matter is now under the consideration of the Committee, and they will gladly make such suggestions as may appear to them necessary and useful.

"The Committee have also to report that they have taken steps to remedy the great inconvenience caused by the recent Stamp Act containing no provision for stamping *Duplicate Conveyances* on sales upon chief rent; and that they are assured by the Solicitor of Stamps, that immediately upon the re-assembling of Parliament, a Bill will be brought forward to remedy the defect; and in the meantime a register has been opened at the stamp office in London, where all Conveyances executed before an Act can be obtained may be registered, so as to obviate the necessity of their being again brought before the Commissioners. The Committee recommend the attention of their successors to this subject.

"The Committee regret that Mr. Charles Gibson, the honorary secretary for the past year, has felt himself compelled to resign his office in consequence of other engagements rendering it impossible for him hereafter to discharge the duties; but they are glad to inform the members that Mr. John Speakman (who will discharge its duties with satisfaction) has consented to accept the office.

"In conclusion, the Committee beg to congratulate the members generally upon the efficiency of the Association, and they trust that sufficient has been accomplished to prove the importance of Law Associations, for protecting the interest of the public and the profession. The Committee rely on the co-operation and support of the members, to aid them in their

anxious endeavours to increase the interests of the Association, the prosperity of which is identical with that of the members at large."

The following gentlemen were elected the Officers and Committee of the Society for the ensuing year:—

President.—Mr. John Vaughan, Stockport.
Vice-Presidents.—Mr. James Gill, Manchester; Mr. R. B. B. Cobbett, Manchester.

Treasurer.—Mr. James Street.

Honorary Secretary.—Mr. John Speakman.

Committee.—Messrs. J. P. Aston, T. Baker, J. Barlow, James Barratt, J. F. Beever, T. T. Bellhouse, T. P. Bunting, William Burdett, H. Charlewood, John Cooper, E. C. Faulkner, Samuel Fletcher, William Foyster, C. Gibson, George Hadfield, Jun., Stephen Heelis, Jos. Janion, Thomas Neild, W. H. Partington, R. Radford, Fras. Robinson, John Sudlow, Thos. Taylor (Norfolk Street), Fred. Thomas, Geo. Thorley, B. K. Tidswell, J. B. Vickers, W. L. Welsh, G. B. Withington, John Wilson.

Chairman of the Committee.—Mr. Francis Robinson.

Vice-Chairman.—Mr. Thomas Baker.

POINTS IN COMMON LAW PRACTICE.

MANDAMUS.—RULE ABSOLUTE WITH COSTS.
—AFFIDAVIT.

A RULE for a mandamus will not be made absolute, *with costs*, upon a mere affidavit of service. The affidavits should show that the litigation is substantially at an end, and that notice has been given to the defendants of the application for costs. *Regina v. East Anglian Railway Company*, 2 E. & B. 475.

STAY OF PROCEEDINGS UNTIL SECURITY FOR COSTS.—TERM'S NOTICE OF FURTHER STEP.

An order was obtained to stay proceedings in an action by the payee against the maker of a promissory note, until the plaintiff, then resident in Ireland, should give security for costs, but it was afterwards rescinded on the plaintiff coming to reside and carry on his business permanently in England. This order was objected to on the ground that a Term's notice had not been given, and a rule *nisi* had been obtained to set it aside. The rule was, however, discharged, with costs, on the ground that the affidavit, on which the motion was founded, contained no positive statement that a Term's notice had not been duly given.

Jervis, C.J., said, "In *Evans v. Davis*, 3 Dowl. P. C. 786, it was *held*, that the rule does not apply where the delay has taken place at the request of the defendant. So,

in the case of an injunction, *Bosworth v. Philips*, 2 W. Bl. 784, where the Court thought the rule only extended to voluntary delay by the plaintiff himself, and that where the defendant stays him by an injunction, that is in its nature an exception out of the rule; and *Nares, J.*, cited *Michell v. Cue*, 2 Burr. 660. It is reasonable that a term's notice should not be required, where the delay is by the defendant's own act or consent, because in that case he knows why the plaintiff does not proceed, and has no reason to expect him to proceed. So, here, the defendant knows that the plaintiff is prevented from proceeding until security is given for costs. If security were given, a term's notice clearly would not be necessary." *Cresswell, J.*, referred to *Doe d. Vernon v. Roe*, 7 Ad. & E. 14; 2 N. & P. 237. *Minchiner v. Martin*, 12 C. B. 455.

JOINT-STOCK TRUST COMPANIES.

To the Editor of the Legal Observer.

SIR,—I do not know whether "Joint-Stock Trust Companies" are intended to be compulsory or no. If yes, we had something of the kind in the city some two centuries since, which was put down by Parliament as a public nuisance. I mean the Court of Orphans of the city of London. When a freeman of London died, the common serjeant, the out-roper or common crier, the town clerk, and the clerk of the orphans (the junior attorney of the Lord Mayor's Court), seized upon his property, and did it not suffer in the shape of fees under pretence of taking care of the orphans? and did not the out-roper knock down the best lots to his friends when he sold the sticks of the defunct by outcries, now called "auction?" This villanous Court was "put down" by 5 Wm. & Mary, c. 10,—the origin of the precious coal tax under which we groan to this day.

The following observations upon this Statute are not mine, but Bohuns, in his *Privilegia Londini*:—"The occasion of passing the Statute was this: Charles 2nd, to support his extravagance, being obliged to use indecent shifts to procure money about the year 1666, applied to the city, and by the treachery and folly of some aldermen obtained a loan on his privy seal, or tallies of loan of such moneys belonging to the orphans as were then in the chamber of the city, the interest of which he paid till about 1671, when being unable to pay principal or interest, and Parliament refusing to supply him with money, he, by the advice of Lord Clifford (who for that service was made Lord Treasurer), closed the exchequer, and became not only bankrupt himself, but made the city chamber so also, whereby many thousand orphans were reduced to misery and

want, and were not only defrauded of their principal, but even of interest, until this Act, which is called an Act for their relief, though it utterly deprives them of their principal, and only allows them 4 per cent. interest, besides divesting the city of their jurisdiction."

This last complaint is certainly somewhat unreasonable. If it should be said that this is the case of a dishonest corporation,—have their never been such things as fraudulent joint-stock companies? I have seen a prospectus of one of the intended companies for taking care of other people's property, containing names to the owners of which I should hesitate about lending 5s.

If these concerns are to be optional, I apprehend they will come into use about the same time as the statutory forms of leases, &c.
J. C.

REFORM OF THE COMMON LAW COURTS.

To the Editor of the Legal Observer.

SIR,—We may deplore the fact, but we cannot deny it, that men, in their civil characters, have always been found to act under the influence of the selfish principle, so far as that principle obtains the sanction of law and recognised usage. This is seen in every department of society; and it is only when the stern march of reform threatens annihilation or imminent danger, that corporate bodies, or professional and privileged classes, show a readiness to meet the requirements of public opinion, and to surrender the evils which have yielded them undue advantages or wealth. The Profession of the Law cannot plead exemption from this common infirmity; and the consequences of its long tenacity of wrong have not only been felt by way of recoil as it regards the Profession itself, but the violent reaction threatens equal if not far greater evil to the Public at large, who are at least as much interested as the Legal Profession in the maintenance of those laws which have made England the envy of the world, and have been the foster parent of her political and commercial grandeur and power.

The abuses practised under the old system, when the Superior Courts were almost the only medium through which any suitor could enforce his rights, furnished the occasion for, and gave plausibility to, the introduction of inferior tribunals, which threaten in their onward progress to engross almost the entire judicature of the country, and by consequence to strip the administration of the Law of England of that dignity and public respect which the gathered wisdom of a series of ages, under the superintendence of distinguished Judges and a learned Bar, had acquired for it. Delay and expense alone detracted from the attachment of the people to the established tribunals of the land: these objections have been but partially removed. Let the processes of the Su-

perior Courts be still more simplified, as much so as they are capable of, and let the costs be in like manner reduced, and then give the suitor his choice between the jurisdictions, and I venture to say that the life of a County Court Judge will become one of easy leisure.

No respectable attorney should object to the costs of a simple action for debt, involving no legal difficulty, being reduced to a scale like that of the Lord Mayor's Court, which, though they are scarcely one-half of those of the Courts at Westminster, would be cheerfully accepted by city practitioners, who eschew the "City of London Sheriffs' Court" if they could safely (that is, without fear of the privileged few) adopt the Lord Mayor's Court, and there can be no doubt that the latter Court is much preferable in the case of plaintiffs; but while the charge of making the practice of the Superior Courts an engine of extortion can be made with reason, no wonder that the torrent of public indignation continues to be poured upon it.¹ It is a cruel thing to visit a defendant, who may only require a few weeks' time, with the full weight of costs which a grasping attorney may exact. I have sickened at witnessing this and similar practices, and regard them as among the causes which alienate the public feeling from the Law and its practitioners at large. Surely it is possible to purge our higher tribunals from these scandals.

The present is the time, while the County Court Commission is in force, for the Profession to step forward with a general united effort to endeavour to uphold and restore the failing jurisdiction of our ancient Courts by rendering them still more in accordance with the requirements and spirit of the age.

A LAW REFORMER.

SPRING CIRCUITS OF THE JUDGES.

(*Maule, J., will remain in Town.*)

NORFOLK.

Lord Campbell, C. J., and Pollock, L. C. B.

Aylesbury, Saturday, March 4.
Bedford, Thursday, March 9.
Huntingdon, Monday, March 13.
Cambridge, Wednesday, March 15.
Norwich and City, Monday, March 20.
Bury St. Edmunds, Saturday, March 25.

MIDLAND.

Jervis, L. C. J., and Coleridge, J.

Oakham, Monday, Feb. 27.
Northampton, Wednesday, March 1.
Lincoln and City, Saturday, March 4.
Nottingham and Town, Thursday, March 9.
Derby, Thursday, March 14.
Leicester and Borough, Saturday, March 18.

Coventry, Thursday, March 23.
Warwick, Saturday, March 25.

HOME.

Parke and Alderson, BB.

Hertford, Wednesday, March 1.
Chelmsford, Monday, March 6.
Lewes, Saturday, March 11.
Maidstone, Thursday, March 16.
Kingston, Saturday, March 25.

NORTHERN.

Cresswell, J., and Platt, B.

Lancaster, Friday, Feb. 17.
Appleby, Tuesday, Feb. 21.
Carlisle, Thursday, Feb. 23.
Newcastle and Town, Monday, Feb. 27.
Durham, Thursday, March 2.
York and City, Tuesday, March 7.
Liverpool, Saturday, March 18.

OXFORD.

Wightman and Talfourd, JJ.

Reading, Saturday, Feb. 25.
Oxford, Wednesday, March 1.
Worcester and City, Monday, March 6.
Stafford, Saturday, March 11.
Shrewsbury, Tuesday, March 21.
Hereford, Saturday, March 25.
Monmouth, Wednesday, March 29.
Gloucester and City, Saturday, April 1.

WESTERN.

Erie, J., and Martin, B.

Winchester, Monday, Feb. 27.
Salisbury, Monday, March 6.
Dorchester, Friday, March 10.
Exeter and City, Tuesday, March 14.
Bodmin, Tuesday, March 21.
Taunton, Saturday, March 25.

NORTH WALES.

Williams, J.

Welchpool, Tuesday, March 14.
Bala, Friday, March 17.
Carnarvon, Monday, March 20.
Beaumaris, Thursday, March 23.
Ruthin, Saturday, March 25.
Mold, Wednesday, March 29.
Chester, Saturday, April 1.

SOUTH WALES.

Crompton, J.

Swansea, Monday, March 6.
Haverfordwest and Tn., Monday, March 13.
Cardigan, Thursday, March 16.
Carmarthen, Tuesday, March 21.
Brecon, Saturday, March 25.
Presteign, Thursday, March 30.
Chester, Saturday, April 1.

¹ One of the first things to be done is to reduce the office fees, many of which were increased by the Lords of the Treasury under the Common Law Procedure Act.—Ed.

BARRISTERS CALLED.

Hilary Term, 1854.

LINCOLN'S INN.

January 26.

James Charles Mathew, Esq.
 Arthur Ansley Young, Esq.
 Samuel Ridings Grimshaw, Esq.
 Francis Snowden, Esq.
 Henry Hyde Nugent Bankes, Esq.
 Eugene Comerford Clarkson, Esq.
 William Questel Williams, Esq.
 Francis Rockcliffe Pierce, Esq.
 Arthur Pepys Whately, Esq.

INNER TEMPLE.

January 27.

John Budd Phear, Esq., B.A.
 John Edward Wilkins, Esq.
 Robert Archibald Douglas, Esq., M.A.
 John Hart, Esq., B.A.
 Henry Padwick, Esq., M.A.
 Ralph Augustus Benson, Esq.
 Francis Young, Esq., B.A.
 John Sleigh, Esq.
 Wellwood Maxwell, Esq., B.A.
 William Erskine Woodrooffe, Esq.
 William Philip Snell, Esq., M.A.
 James Fitz James Stephen, Esq., B.A.
 Hon. Leopold Geo. Fredk Agar Ellis, M.A.
 John Henry Bignold, Esq., B.A.
 George Campbell, Esq.

MIDDLE TEMPLE.

January 26.

William Lowndes, Esq., B.A.
 John Bower Brown, Esq.
 Joseph Kaye, Esq., M.A.
 Thomas Pacey Keene, Esq.
 Joseph Wigg, Esq.
 William Frederick Laxton, Esq.

GRAY'S INN.

January 26.

William Langford, Esq., LL.D.
 James Wynne, Esq., M.A.
 Jonas Levy, Esq.

NOTES OF THE WEEK.

INCONVENIENCE OF THE COURTS AT WESTMINSTER.

THE Court of Exchequer sat *in Banc*, on the 3rd instant, in the Bail Court,—the other Court being occupied by the Sittings at *Nisi Prius*. The Bail Court is justly described as “an inconvenient hole.” Mr. Baron *Alderson* said, “He had sat in the Bail Court for the last time. It was a disgraceful thing that the Government did not provide the Judges with Courts in which they might sit and discharge their public duties without incurring a positive risk of death. He had sat on former occasions after Term in the Bail Court, and had on each occasion caught a severe cold and contracted serious illness, and he, for one, would never sit there again. It was positively shameful.”

Mr. Baron *Platt* fully bore out his learned brother's animadversions on the Bail Court, and hoped he should never be again called upon to sit there.

RESULT OF HILARY TERM EXAMINATION.

The number of Candidates who gave notice of their intention to appear before the Examiners was 108, but only 85 produced satisfactory testimonials of due service. We regret to hear that of these, no less than 23 did not pass.

PRIVATE BILLS IN PARLIAMENT.

By order of the *House of Lords*, Private Bills must be brought in by the 20th March; but Bills approved by the Court of Chancery will be received till the 30th May.

The Reports of the Judges must be presented by the 30th May.

SCOTCH LAW APPOINTMENT.

The Queen has been pleased to appoint *Alexander Stuart Logan, Esq.*, Advocate, to be Sheriff of the Shire or Sheriffdom of Forfar.—From the *London Gazette*, of the 7th Feb.

NEW MEMBER OF PARLIAMENT.

Jno. Lloyd Vaughan Watkins, Esq., for the Borough of Brecknock, in the room of *Chas. Rodney Morgan, Esq.*, deceased.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

In re *Wylde*. Jan. 31, 1854.

PETITION BY EXECUTORS OF DECEASED LUNATIC FOR TRANSFER OF FUND.—SERVICE ON COMMITTEE ALTHOUGH DISCHARGED.

Held, that notice of a petition by the executors of a deceased lunatic for the transfer out of Court of his personal estate, must be served on the committee, notwithstanding his accounts have been passed and his

recognizances vacated under the 44th Order in Lunacy of November 7 last.

THIS was a petition on behalf of the executors of a deceased lunatic, for the transfer out of Court of his personal estate, which had been paid in by the committee of the person and the estate on the accounts having been passed, and his recognizances vacated under 44th Order in Lunacy of 7th November last. *Dickinson* in support.

The *Lords Justices* said, that notice of the petition must be served on the Committee.

Dollfus and others v. Pickford. Jan. 31, 1854.

INJUNCTION TO RESTRAIN BREACH OF CONTRACT. — QUESTION FOR DAMAGES AT LAW.

The defendant had obtained certain printed fabrics from the plaintiffs at a cheaper rate per yard, on the representation they were for exportation, and not for home consumption. On his selling a part in England, held, affirming the decision of Vice-Chancellor Stuart, that the breach was a question for damages at law, and not for an injunction in equity.

It appeared that the plaintiffs, who were manufacturers of printed fabrics, had sold to the defendant a quantity of the goods at 8d. per yard, which was a lower price than that charged for the home market, on his representing that they were required for foreign exportation, but that he had sold a part to retail dealers to the injury of the plaintiffs, and a special injunction was asked to restrain the sale otherwise than for exportation. The Vice-Chancellor Stuart having refused the injunction, this appeal was presented.

Malins and Mackeson in support; *Temple, Taylor, and Spinks*, contra, were not called on.

The Lords Justices said, that as the question was one for damages in an action at law, the injunction had been properly refused, and the appeal was accordingly dismissed.

Master of the Rolls.

In re Smith, ex parte Thomas. Jan. 30, 1854.

SOLICITOR AND AGENT.—PAYMENT IN DISCHARGE. — RE-TAXATION. — RE-OPENING ACCOUNT.

On the petitioner's bill of costs being taxed in the matter of a bankruptcy, and in which the respondent acted as agent, a sum of 200l. was paid to the latter, but it was a question whether it was in final settlement or not. A re-taxation was then ordered of the petitioner's bill of costs, and 300l. was taxed off: Held, that such re-taxation reopened the matter, and that the petitioner was entitled to the usual order to tax the respondent's bill of costs, notwithstanding such payment.

THIS was a petition on behalf of Mr. Jones Thomas, of Oswestry, Salop, for the taxation of the bill of costs of Mr. John Smith, of Birmingham, in respect of business transacted as agent in the bankruptcy of one Hayward. It appeared that the bill of costs of the petitioner, in the matter of the bankruptcy, had been taxed at 700l., and paid in March, 1851, and that 200l. had been handed over to Mr. Smith, but there was a dispute whether the payment was made as a final compromise of Mr. Smith's charges or not. On an order having been obtained for a re-taxation of the petitioner's bill of costs, 300l. was taxed off, whereupon he claimed the return of a portion of the 200l. from Mr. Smith, and on his refusal, this petition was presented for a taxation.

Shapter, Dickinson, and Morris, for the several parties.

The Master of the Rolls said, that whatever might have been the understanding on which the payment was made to Mr. Smith, the order for the re-taxation of the petitioner's costs reopened the transaction and entitled him to the usual order for a taxation.

Vice-Chancellor Kindersley.

Rogers v. Hooper. Jan. 31, 1854.

REPLICATION, WITHDRAWING ON SUBSEQUENT ANSWERS. — FURTHER REPLICATION. — SPECIAL EXAMINER IN COUNTRY.

An application was refused for leave, to the plaintiff, to withdraw his replication, on some of the defendants having answered after it was filed, inasmuch as it was open to him to file a further replication with reference to the subsequent answers.

A special examiner was appointed to take the examination of witnesses in the country, who were too infirm to attend the examiner.

C. Purton Cooper appeared in support of this motion for leave to the plaintiff to withdraw the replication, on some of the defendants having answered after it was filed, in order to amend the same, and for a commission to take the examination of certain witnesses who were resident in the country, and were too infirm to attend the examiner.

Baily, W. Hislop Clarke, and Boyle, contra.

The Vice-Chancellor said, that as there might be a further replication with reference to the subsequent answers, it was unnecessary to withdraw the replication, but the other part of the motion for the appointment of a special examiner was granted.

Vice-Chancellor Stuart.

Thorpe v. Owen. Jan. 30, 1854.

DEVISE OF REAL ESTATES.—GAVELKIND.—PERSONALTY. — MARRIAGE OF WARD OF COURT.

A testator, by his will, devised all his real estates to his heir male, and his heirs in strict tail male: Held, that estates in gavelkind were included, and passed under the devise.

The personal estate, which was directed to be divided among the testator's children, was paid into Court: on a marriage of a daughter without a settlement, her share was directed to be carried to a separate account, in trust for her to her separate use for life, with remainder to her husband for life, with remainder to their children.

THE testator, by his will, dated in 1841, devised all his real estates to his then heir male and his heirs in strict tail male, and directed his personal estate to be divided equally between his children. On the death of the testator, leaving several sons and daughters, and possessed of real estate of common socage and of gavelkind tenure, this petition was presented

for a declaration as to the rights of the sons in the real, and for a division of the personal estate, which had been converted and paid into Court.

Bacon, Malins, Craig, Greene, Osborne, B. L. Chapman, Nichols, Smale, and Southgate, for the several parties.

The Vice-Chancellor said, that the heir-at-law was entitled to the real estate both of common socage or of gavelkind tenure, and directed the share of one of the daughters, who was a ward of Court and had married without any settlement, to be carried to a separate account in trust for her to her separate use for life, with remainder to her husband for life, with remainder to their children.

Vice-Chancellor Wood.

Rochford v. Hackman. Jan. 21, 26, 1854.

WARD OF COURT.—DISCHARGE FROM ENLISTMENT IN EAST INDIA COMPANY'S SERVICE.

An infant ward of Court having enlisted in the service of the East India Company, an order was made on motion, after notice to the company, and to the commanding officer of the regiment, for the delivery of the ward to the care and custody of his guardian.

THIS was a motion to discharge George Rochford, an infant ward of Court, who had enlisted in the service of the East India Company, from the dépôt at Worley, Essex. It appeared he was to be sent out on the 30th inst. to India. The serjeant attended in obedience to the writ of *habeas corpus*, but there was no affidavit as to the cause of detaining the infant at the dépôt, nor any formal return.

De Gex, in support, referred to *Harrison v. Goodall* (V. C. P.), ante, vol. 43, p. 278.

The Vice-Chancellor directed the case to stand over until the 26th inst., and notice to be given to the East India Company and the commanding officer of the regiment, that the infant was not to be taken out of the jurisdiction without leave; and an order was eventually made for the delivery of the ward to the custody and care of his guardian.

Busher v. Needell and others. Jan. 31, 1854.

DISCHARGE OF DEBT DUE TO TESTATOR BY SUBSEQUENT DECLARATIONS.—ENTRY IN LEDGER.

The defendant borrowed a sum of 4,000l. from the testator, his uncle, who entered the same in his ledger as cash payable, with 3½ per cent. interest: Held, that evidence of the testator's subsequent declarations of his intention to give his nephew a similar sum, could not operate as a discharge of the entry made at the time of the loan.

It appeared that the defendant had borrowed a sum of 4,000l. from the testator, his uncle, and that it was entered in the ledger as cash payable, with interest at 3½ per cent. There was evidence that the testator had de-

clared his intention to give the defendant the amount of the loan at some time or other, and the question was, whether this amounted to a discharge.

Wigram and Charles Hall for the plaintiffs; *Roll and Collier* for the defendant Needell; *Cotterell* for another party.

The Vice-Chancellor said, that although the parol evidence was strong of the testator's declaration after the advance was made, yet it could not countervail the distinct evidence furnished by the entry at the time, and did not amount to a discharge.

Court of Queen's Bench.

Regina v. Registrar of Pharmaceutical Society.
Jan. 26, 1854.

PHARMACEUTICAL SOCIETY ACT.—ADMISSION OF IMPROPER PERSONS UNDER BYE LAW.—MANDAMUS.

A rule was made absolute for a mandamus on the registrar of the Pharmaceutical Society, to make out a complete register of the members and associates, under the 15 & 16 Vict. c. 56: but the rule was refused for the removal from the register of the names of certain persons admitted under bye laws not in accordance with the Act.

THIS was a rule nisi granted on November 24 last, for a mandamus on the defendant to make out a complete register of the members and associates of the above society. By the 15 & 16 Vict. c. 56, it was provided, that "all such persons as shall at the time of the passing of this Act be members, associates, apprentices, or students of the said Pharmaceutical Society" (s. 6); and "every such person who shall have been examined by the persons appointed as aforesaid, and shall have obtained a certificate of qualification from them, shall be entitled to be registered by the registrar according to the provisions of this Act" (s. 10). Additional bye-laws had been made whereby any person practising as a chemist and druggist could become a member on obtaining a certificate of qualification from two members, and it appeared many persons had been accordingly admitted. The Court refused the rule nisi to remove the names of the persons so admitted from the register, but granted it in the above terms.

Attorney-General and Bramwell showed cause against the rule, which was supported by *Sir F. Kelly, Macaulay, and Lloyd.*

The Court made the rule absolute.

Regina v. Powell and others. Jan. 27, 1854.

PUBLIC COMPANY.—ELECTION OF WARDENS.—USAGE FOR 300 YEARS.—QUO WARRANTO.

The four wardens of the Mercers' Company had been elected by the court of assistants for upwards of 300 years: Held, that the usage was valid, although a charter of Richard 2 named the freemen and common-

alty on the electors, and a rule nisi for a quo warranto on the wardens was discharged with costs.

THIS was a rule nisi for a *quo warranto* on the four wardens of the Mercers' Company. It appeared that the company was governed by a master, four wardens, and 30 assistants, and that it had been the usage for upwards of 300 years that the master and wardens were elected by the assistants from their own body, and that vacancies in the court of assistants were supplied from the general body of freemen.

Attorney-General, Bramwell, and Bovill showed cause, citing *Res v. Attwood*, 4 B. & Ad. 481.

Cleasby in support of the rule, on the ground that under the charter of Rich. 2, the freemen and commonalty were the electors of wardens, and that no mention was made of the court of assistants.

The Court said, that as the usage had existed for the period shown, it was valid, and the rule must be discharged, with costs.

Newmarket Railway Company, app., v. Overseers of St. Andrew-the-Less, resp. Jan. 30, 1854.

RAILWAY COMPANY.—MONEY PAID FOR USE OF LINE BY ANOTHER RAILWAY COMPANY.—EARNINGS.—LIABILITY TO RATE.

Held, (*per curiam*, dissentiente Lord Campbell, C. J.), that a sum of money paid by another railway company for the use of a railway, under an agreement for the payment for the same of a sum sufficient to raise the dividend to 3 per cent., was not liable to be rated to the poor as "earnings."

It appeared on this appeal from a poor-rate, that the appellants' branch line of railway was used by the Eastern Counties' Railway Company, who paid for such use a sum of money sufficient to raise their dividend to 3 per cent., and that 3,705*l.* had been accordingly paid in one year. The question arose, whether this sum was liable as earnings to be rated.

The Court (dissentiente Lord Campbell, C. J.) held, that the sum did not constitute earnings, and the appeal was accordingly allowed.

Queen's Bench Practice Court.

(Coram Erle, J.)

Toole v. Sir H. Seale, Bart.; Brooken v. Same. Jan. 31, 1854.

ACTION FOR PENALTIES UNDER MUNICIPAL CORPORATIONS' ACT.—LEAVE OF COURT TO COMPOUND.

Leave was granted under the 18 Eliz. c. 4, s. 3, to compound actions brought to recover penalties under the 5 & 6 Wm. 4, c. 76, s. 48, against a churchwarden, for refusing to sign and revise the burgess list, on payment of a moiety of the penalty, with the costs.

THIS was an application for leave under the 18 Eliz. c. 5, s. 3, to compound these actions, which were brought under the 5 & 6 Wm. 4, c. 76, s. 48, to recover two penalties of 100*l.* and 50*l.* against the defendant, as churchwarden of Townstall parish, Dartmouth, for refusing to sign and revise the burgess list.

Maynard in support, stated the defendant offered to pay a moiety of the penalty and the costs, and it was a question whether he was not protected from liability under the 16 & 17 Vict. c. 79, s. 14.

The Court granted the application.

Court of Common Pleas.

Owen v. Routh and another. Jan. 27, 1854.

ACTION FOR VALUE OF MINING SHARES NOT DELIVERED.—PLEA OF DISCHARGE UNDER INSOLVENT ACT.

To an action for the value of 10 shares in a mining company which the defendant had not in pursuance of his contract delivered, he pleaded his discharge under the Insolvent Debtors' Act: Held, that the plea was no answer to the action, as the discharge only released him from all debts and sums of money due or claimed to be due at the time of the vesting order, and that the plaintiff was entitled to recover,—the value to be taken as at the time of the trial.

THIS was a special case for the opinion of the Court, from which it appeared that the plaintiff had deposited 50 shares in the St. John del Rey Mining Company, on July 5, 1849, with the defendants, who had undertaken to return them on September 11, and the defendant Routh handed over 500*l.* as a security for the same, but that on the defendants not returning them they agreed to do so on October 31, and to give the plaintiff a commission of one-sixth per share for the loan on his returning the 500*l.* The shares were not accordingly returned on October 31, and on November 26 the defendants authorised the plaintiff to purchase 40 of the shares out of the 500*l.*, and engaged to deliver 10 more shares within six months, but on their not being delivered, this action was brought on November 2, 1852, to recover their value, to which the defendant, Routh, pleaded his discharge under the Insolvent Debtors' Act in respect of all debts and sums of money due on August 3, 1852,—judgment by default having passed against the other defendant.

Byles, S. L., and C. Pollock for the plaintiff; Lush for the defendant.

The Court said, that the plea did not operate as a discharge in respect of the cause of action, as it only released the insolvent from all debts and sums of money due or claimed to be due at the time of the vesting order, and that the plaintiff was entitled to recover the value of the shares as estimated at the time of the trial.

Taylor v. Best and others. Jan. 30, 31, 1854.

ACTION AGAINST CHARGÉ D'AFFAIRES.—PRIVILEGE.—RULE TO STAY PROCEEDINGS.

The plaintiff sued the *chargé d'affaires* of the Belgian Government in this country, together with his co-directors, to recover the amount of deposits on shares in a Belgian mining company, a "*société en commandite*." The defendant entered the common appearance and obtained a rule to stay the proceedings. The rule was discharged, it not appearing that the plaintiff had any intention to interfere with the defendant's person or goods, and held that he was properly made a defendant to avoid a plea in abatement.

THIS was a rule *nisi*, granted on January 12 last, to stay the proceedings in this action to recover the amount of 250*l.* paid by the plaintiff as deposit on certain shares in the Royal Nassau Sulphate of Barytes Mining Company (a *société en commandite*), of which it was alleged the defendant, Mons. Drouet, who was *chargé d'affaires* of the Belgian Government in this country, was a director. The rule had been obtained on the ground that the Court had no jurisdiction over the defendant, who was minister of the Belgian Government in this country.

M. Chambers and Pearson showed cause; Byles, S. L., and Harrison for two defendants on the same side; Willes in support.

The following authorities were cited:—7 Anne, c. 12; 4 Inst. 153; 2 Steph. Comm., p. 480; Wildman's Institutes of International Law, pp. 93, 102; *Duke of Brunswick v. King of Hanover*, 6 Beav. 1; 2 H. of L. 1; *Munden v. Duke of Brunswick*, 16 Law J. 300; *Triquet v. Bath*, 3 Burr. 1478; 1 W. Bl. 471; *Barbuit's case*, Cas. temp. Talb. 281, cited 3 Burr. 1481; Vattel's Law of Nations, b. 4, c. 7; c. 8, s. 114; Bacon's Abr. title "Ambassadors;" *Emperor of Brazil v. Robinson*, 5 Dowl. P. C. 522; Molloy de Jure Maritimo, b. 1, c. 10, s. 16; Grotius, b. 2, c. 18; *Toogood v. Novello*, 1 B. & C. 554; *Viveash v. Becker*, 3 M. & S. 284; *Evans v. Higgins*, 2 Str. 797; *Malachi Carolino's case*, 1 Wils. 78; *Hopkins v. De Robeck*, 3 T. R. 79; 8 Marten's Procès de droits de gens modernes, c. 5; 1 Wheaton, p. 279; 2 Kluber's Droit des gens modernes de l'Europe, p. 2; 1 Kent's Com., p. 48; Wicquefort, s. 28; *Calvin's case*, 7 Co. Rep. 15; Bynkershoek, c. 14; *Cross v. Talbot*, 8 Mod. 238; Comyn's Dig. tit. "Ambassador" (B.)

Cur. ad. vult.

The Court said, the proper form of application was, not to stay all proceedings, but to discharge the bail bond in case of arrest on the common appearance being entered. The plaintiff, in order to avoid a plea in abatement, was bound to sue all the co-contractors. The ambassador, in the present case, had voluntarily entered an appearance and submitted to the

jurisdiction of the Court, and it did not appear the plaintiff had any intention to interfere with his person or his goods. The rule would therefore be discharged.

Levi v. Metropolitan Economic Cab Company.
Jan. 31, 1854.

ACTION FOR PRINTING PAPERS FOR COMPANY REGISTERED UNDER 7 & 8 VICT. c. 110.—EVIDENCE.

Held, that the plaintiff was entitled to recover from a company completely registered and incorporated under the 7 & 8 Vict. c. 110, for the printing of certain papers, &c., on proof of delivery at their office, where it appeared such papers, &c., were of no use to any one else, although there was no evidence that the defendants had used the same.

THIS was an action to recover from the defendants, who were completely registered and incorporated under the 7 & 8 Vict. c. 110, for printing various papers, &c., and on the trial the plaintiff obtained a verdict. There was no evidence as to who had given the order nor that the defendants had used the goods, but the delivery at the defendants' offices was proved. A rule *nisi* was obtained on November 5 last, for a new trial on the ground of misdirection.

By s. 44 it is enacted, that "every such contract shall be in writing, and signed by two at least of the directors of the company on whose behalf the same shall be entered into, and shall be sealed with the common seal thereof, or signed by some officer of the company on its behalf, to be thereunto expressly authorised by some minute or resolution of the board of directors applying to the particular case; and that in the absence of such requisites, or any of them, any such contract shall be void and ineffectual (except as against the company on whose behalf the same shall have been made)."

Joyce showed cause against the rule, which was supported by Prentice.

The Court said, the evidence, although slight, was sufficient to show the papers had been used by the defendants as they would have been useless to any one else, and the rule was accordingly discharged.

Court of Exchequer.

Oppenshaw v. Whitehead; Mucklow v. Same.
Nov. 17, 1853; Jan. 19, 1854.

ATTORNEY.—TAXATION OF COSTS.—WHERE RETAINED BY PLAINTIFFS IN TWO ACTIONS AGAINST SAME DEFENDANT.

An attorney was retained on behalf of two different plaintiffs in actions against the same defendant for damages occasioned by the bursting of a reservoir, and in which they obtained verdicts: Held, making absolute a rule for the reviewal of the taxation.

that the attorney was entitled to charge for drawing the briefs in both actions, although some portions were common to both, but not separately in both actions where a witness was subpoenaed or a journey made for both, in which case the charge would be divided in the Master's discretion.

In these actions to recover damages for injuries sustained by the plaintiffs from the bursting of the defendant's reservoir through negligence, they had obtained verdicts. The Master had refused, on the taxation of costs, to allow the attorney, who was retained and acted in both the actions by the plaintiffs, for drawing in both cases such portions of the briefs as were common to both, but only for drawing in one action and for copying in the other, and had divided these two charges between the two briefs. This rule had thereupon been obtained for a reviewal of his taxation.

Gray showed cause; Hill in support.

Cur. ad. vult.

The Court said, that where the business was actually performed in two causes, the Master ought not to take into consideration that the same attorney acted for both parties unless the actions were consolidated. Where, however, a witness was subpoenaed, or a journey made for both causes, the charge should be divided in the discretion of the Master. The rules would therefore be made absolute for a reviewal of the taxation.

Liverpool Adelphi Loan Association v. Fairhurst and wife. Jan. 18, 31, 1854.

HUSBAND AND WIFE. — LIABILITY FOR WIFE SIGNING PROMISSORY NOTE AS FEME SOLE.

A married woman signed a promissory note as security for a sum advanced to B. by the plaintiffs, representing she was sole and unmarried whereas she was married: Held, on error from the Liverpool Passage Court, that neither her husband nor herself were liable in an action for such misrepresentation.

This was an action to recover damages from the defendant for the false and fraudulent representation of his wife that she was single and unmarried and competent to join in a promissory note to the plaintiff as surety for a loan of 30*l.* to one Thomas Brassey. The plaintiffs, on the trial in the Liverpool Passage Court, obtained a verdict, whereupon this writ of error was brought.

Hill for the defendants; Willes for the plaintiffs.

Cur. ad. vult.

The Court said, that the action would not lie either against the husband or his wife, as a *feme covert* was incapable of binding herself by her contract, which was therefore altogether void. Although she would be liable for all torts committed during coverture, and the husband might be joined as a defendant, and

also for frauds committed by her on any person, yet where the fraud was directly committed with the wife's contract, which was in fact the means of effecting it and was parcel of the same transaction, she could not be held responsible, nor could her husband be sued on the security given by her. The judgment of the Court below would therefore be reversed.

Holland and others v. Lea and others. Jan. 30, 1854.

ACTION ON BOND ON APPOINTMENT OF ASSISTANT OVERSEER. — CONFIRMATION BY JUSTICES.

On the appointment of an assistant overseer in 1845, the defendant entered into a bond for his duly accounting, &c. It appeared that this appointment was not confirmed by the justices, but that a subsequent appointment in 1846 with an increase in salary was confirmed: Held, that the defendants were not liable on the bond.

This was an action by the churchwardens of a parish to recover penalties on a bond entered into by the defendants on the appointment of an assistant overseer in March, 1845, upon his defalcations. It appeared on the trial before Martin, B., that the appointment in 1845 had not been confirmed by the magistrates, but that they had confirmed another appointment in July, 1846, under which the salary was increased. The plaintiffs had obtained a verdict, whereupon this rule was obtained on leave reserved to set it aside and enter a nonsuit, on the ground that the appointment in 1845 not having been confirmed had not been acted on.

The Court (per Pollock, L. C. B., and Parke and Alderson, BB.,—dissentiente Martin, B.), said, that the justices had only ratified the appointment of July, 1846, and that the defendants were not therefore liable, and the rule was accordingly made absolute.

Jones v. Giles. Jan. 13, 31, 1854.

WEIGHTS AND MEASURES' ACT. — PLEA TO ACTION FOR NON-DELIVERY OF IRON. — LONG WEIGHT.

To an action for the non-delivery of iron, the defendant pleaded that it was illegal under the 5 & 6 Wm. 4, c. 63, s. 11, the sale being by long weight or 120*lbs.* to the cwt.: Held, that the plea was bad.

Quere, whether the plaintiff was entitled to the delivery of more than 112*lbs.* to the cwt.

This was a rule nisi obtained on Nov. 5 last, to enter the verdict for the plaintiff in this action for non-delivery of a quantity of iron, and to which the defendant pleaded the illegality of the contract under the 5 & 6 Wm. 4, c. 63, s. 11, the sale being by "long weight," or that the cwt. contained 120*lb.*, and on the trial before Martin, B., the defendant obtained a verdict

Keating and Archbold showed cause; *H. Hill and Gray* in support.

The Court said, that the contract was valid, and the plea was bad, but in reference to the question, whether the plaintiff was entitled to the delivery of more than 112lb. to each cwt., after taking time to consider and differing in opinion, recommended a *stet process*,—the amount in difference being small.

Creed v. Fisher. Jan. 20, 31, 1854.

ACTION FOR ASSAULT. — PEREMPTORY RIGHT TO CHALLENGE SPECIAL JURY. — EXCESSIVE DAMAGES.

Semble, that the plaintiff has no right to challenge the special jury peremptorily until the number was reduced to 24, without assigning cause.

A rule was refused for the new trial of an action for assault and battery, on the ground of excessive damages, where it was not shown the damages proceeded from improper motive or feeling on the part of the jury, within whose province the question exclusively rested.

THIS was a rule nisi granted on November 7 last, for a new trial in this action of assault and battery, on the ground the defendant, who was the vicar of a parish in Devonshire, had not been allowed to challenge the special jury, without assigning some cause, and on the ground that the damages given of 300*l.* were excessive. It appeared on the trial, before *Talfourd, J.*, at the last Devon Assizes, at Exeter, that the assault had been committed on the plaintiff accusing the defendant of gross misrepresentations in reference to some disputes as to the custody of a tithe map. The matter had been much discussed, and it was sought to challenge those of the special jury who had expressed, or were supposed to have expressed, any opinion on the subject. The special jury panel under the present practice contains 48 names, and it was contended the plaintiff had a right to challenge peremptorily until the number was reduced to 24.

Crowder and Collier showed cause against the rule, which was supported by *Slade, Mowbray, and Coleridge*.

The Court having directed counsel to confine their arguments to the second ground, as there could be no rule on the first ground, advised the plaintiff to accept the apology which the defendant now offered, and on its being refused, said, that as the defendant had not made out that the damages proceeded from some improper motive or feeling on the part of the jury, and the question was exclusively within their province, the rule must be discharged.

Court of Criminal Appeal.

Regina v. Overton. Jan. 28, 1854.

INDICTMENT FOR EMBEZZLEMENT. — EVIDENCE. — RECEIPT STAMP.

On an indictment for embezzlement, the pro-

secutors gave in evidence a book kept by S. & Co., in which purchases were entered, and which was signed by the person authorised to receive payment for the same, in order to prove by the clerk payment to the prisoner, and his identity: Held, that it was inadmissible for such purpose without a stamp, and the conviction was reversed.

Held also, that the clerk should have proved payment to the person signing, and then that another witness should have identified the handwriting in the book.

THIS was an indictment for embezzlement. It appeared that Messrs. Shoolbred and Co. kept a book in which purchases made by them were entered, and which was signed by the person authorised to receive payment for the same, and that after Messrs. Shoolbred's clerk had proved payment to the person signing the book, it was produced to the clerk in order to show the identity of the prisoner as having signed in respect of goods purchased from his employers, Messrs. Wellstead & Co. An objection, on the trial before the Recorder of London, that the entry was not admissible without a stamp had been overruled.

Metcalf for the prisoner; *Parry* for the prosecutors.

The Court said, that in accordance with *Regina v. Hunter*, 2 Leach, 624; 2 East, P. C. 928, the document required a stamp, as being an acknowledgment or receipt for the payment or discharge of a sum of money, and a proof of a direct issue between the parties. The course should have been, instead of receiving the whole entry in evidence, to have asked the witness whether he paid the money to the man who signed the book, and then to have proved by another witness who knew the prisoner's handwriting that he signed the book. The conviction would therefore be reversed.

Regina v. Sharman. Jan. 28, 1854.

CONVICTION FOR UTTERING FORGED TESTIMONIAL.

An indictment was affirmed for uttering a forged testimonial, purporting to be written by the rector of a parish, recommending the prisoner and his wife as fit and proper persons to undertake the charge of a school, for the purpose of receiving the emoluments of the office.

THIS was an indictment against the prisoner for forging a testimonial purporting to be written by the rector of a parish, recommending the prisoner and his wife as fit and proper persons to undertake the charge of a school, and also for uttering the same. On the trial at the Central Criminal Court, he was acquitted on the charge of forgery but found guilty on that of uttering for the purpose of deceiving and of receiving the emoluments of the office.

Clarkson for the prosecution.

The Court affirmed the conviction.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, FEBRUARY 18, 1854.  
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PARLIAMENTARY REPRESENTATION OF THE INNS OF COURT.

HAVING good reason to believe that the claims of the Inns of Court to be directly represented in the House of Commons, had been urged upon the attention of her Majesty's Government, and met the approval and sanction of more than one of the leading Members of the Cabinet, we took occasion, some weeks since, to advert to the importance of the Professional considerations involved in the question, and to prepare that portion of the Legal Profession, to whose interests this publication is especially devoted, for the approaching discussion. What was then only matter of anticipation, is now to some extent a reality. In introducing the Bill to amend the representation of the people in the Commons House of Parliament, and explaining the alterations proposed, Lord John Russell distinctly recognised the principle, that education and intelligence afforded a guarantee for the judicious and beneficial exercise of the elective franchise, and that the influence of education and intelligence would be advantageously felt if the privilege of direct Parliamentary representation was conceded to other learned bodies, in addition to the Universities of Oxford, Cambridge, and Dublin. The noble Lord, in explaining the intentions of the Government to confer the right of representation upon the Inns of Court, expressed himself in the following terms, as appears by the reports in the daily journals:—

"There is another kind of representation which has been often spoken of, and to which we propose at least to give some of the seats at our disposal. The first which I shall mention of this kind are the Inns of Court. I know some hon. gentlemen think that already there are a sufficient number of lawyers in the

House, but my persuasion is that there would be a great benefit when we put the representation in the position in which we purpose to place it, that we should have two of the most eminent lawyers in the country returned to this House; and I believe, that while of course lawyers will have as good a chance, if not better, than other candidates for boroughs, the lawyers connected with the Inns of Court would take pride in choosing two of the most eminent men in their Profession to represent them in Parliament. I cannot but think, and I trust the House will concur with me, that it is of great importance to have some of the most eminent lawyers in the country possessing seats in this House, and able to prevent, by their advice, honourable members from being misled by the legal doctrines emanating from those honourable members who may not have had so much experience, or attained so much eminence in the Profession as themselves."

In the observations addressed to our readers, and already referred to, the objection noticed by Lord John Russell, that there is "already a sufficient number of lawyers in the House," was commented upon and met. His Lordship's intimate acquaintance with, and personal experience of, the constitution of that assembly of which he is now perhaps the most distinguished member, enabled him to suggest a fresh argument in reply to those who found their opposition to the proposal to give members to the Inns of Court, upon the fact that there are already a considerable body of lawyers amongst the representatives of the people. Lord John Russell truly predicted, that the members selected to represent the Inns of Court would be the most eminent members of the Legal Profession, and that the presence of such men in Parliament, irrespective of all other considerations, would be of incalculable value in impressing upon the lay members sound legal doctrines, and protecting them from the hazard of being unduly influenced or

mised, upon such subjects, by professional men of limited experience and superficial views. The importance of the suggestion, and its practical application with reference to the present constitution of the House of Commons, is too obvious to require further argument.

In the present stage, we are chiefly desirous of impressing upon such of our readers as concur in thinking that the privilege of direct representation in Parliament would be beneficial to the Profession, that much remains to be done to secure that object, and to render it really valuable to the Legal Profession taken as a whole. Without underrating the influence of the Government, or insinuating a doubt as to the *bona fides* of the proposition submitted to Parliament in respect of the representation of the Inns of Court, it is not too much to say, that to carry such a proposition against the prejudices of a large section of the supporters of the Government in Parliament, Ministers will require to be supported and fortified from without. Leaving to members at both sides of the House, the unfettered exercise of discretion in dealing with other parts of the ministerial scheme, the friends of the Legal Profession should be solicited to give effect to the earnest wishes of their professional constituents, so far as regards this part of the new Reform Bill. If a feeling of lukewarmness or indifference is exhibited by those to whom this boon is more particularly offered, let our readers not be surprised to find, that before the Bill passes through a Committee of the House of Commons, the two seats allotted to the Inns of Court have been transferred to more urgent claimants. To prevent such a result, it is indispensable that the Legal Profession should be united. To insure unanimity it is requisite, in the first instance, to be satisfied that every portion of the Legal Profession will derive proportionate benefit from the proposed arrangement.

We have not yet had an opportunity of perusing Lord John Russell's Bill, and are not, therefore, prepared to state, whether the constituency it is intended should return the two members for the Inns of Courts, comprehends the whole Profession, or only a fraction of it. The Government and the House of Commons must be made aware, and that without any unnecessary delay, that the Attorneys and Solicitors, who constitute the great majority of the Legal Profession, are not now, though they were formerly, members of the Four Inns which are distinguished as the Inns of

Court, although the larger proportion of the members of the Inns known as the Inns of Chancery consists of Attorneys and Solicitors. No practical difficulty, we apprehend, would arise from confining admission to the Inns of Chancery to those who are admitted upon the Register of Attorneys and Solicitors, and in this manner an electoral constituency might be formed numerically large, and not exceeded in intelligence, knowledge of constitutional principles, and devotion to the established institutions of the country, by any in the empire. It would be premature further to discuss this part of the question, until the intentions of her Majesty's Government, as to the basis of the proposed constituency, has been distinctly and accurately ascertained. Our earnest hope is, that no narrow jealousies will be allowed to interfere, but that the question may be discussed, both in public and private, in a liberal and temperate spirit, with no other view than the common good, and that the new representatives for the Inns of Court, when elected, may be actually, as well as virtually, the representatives of every branch of the Legal Profession.

THE SITE OF THE NEW COURTS OF LAW AND EQUITY.

AN able pamphlet by "*An Old Law Reformer*," the author of "*Considerations on Ecclesiastical Courts Reform*," has just been published, with the title of "*Where shall the New Law Courts be built?*"¹ The owners of the houses in Lincoln's Inn Fields have an eloquent and zealous advocate in the writer whose argument in favour of Lincoln's Inn Fields is now before us. We have no doubt whatever of the sincerity of the "*Old Law Reformer*;" he is advocating the choice of a site which, no doubt, he honestly deems the best for the general good. Nevertheless, we are convinced that he is altogether mistaken. He agrees with the promoters of the measure, that the erection of a building for all the Courts of Law and Equity, has become a work of absolute necessity, not to be delayed; and we agree with him, that it is of the first concern that the Courts should be placed in the most favourable position for the administration of justice in this vast metropolis.

Our Law Reformer starts with the proposition, "that the Courts demand ample

¹ Published by Day, Carey Street.

space, quietude, air, light, and convenient access for foot-passengers and carriages." Granted. The site between the Strand and Carey Street, uniting three out of four of the Great Inns of Court—extending from the two Temples to Lincoln's Inn—sufficiently meets all these requirements.

1. It has or may have equal *space* to the site of Lincoln's Inn Fields. The whole area of eight acres may be taken, either now or at a future time. It is proposed only to grant building leases in order to diminish the first outlay. The ground would be hereafter available, though, we think, "ample space" is already marked out.²

2. With regard to *quietude*, it may be admitted that the present secluded state of Lincoln's Inn Fields is greater than that of the Strand in its present condition; but in the Law Society's Plan it is proposed to widen the Strand to 100 feet. A considerable space will, of course, be allowed for the foot pavement. A very broad road may be so constructed as greatly to diminish the usual noise which prevails in narrow ill-paved streets. The Courts may be placed on the first floor, somewhat in the interior of the building, and lighted from above with glass of sufficient thickness. The principal Courts, indeed, may be almost as far from the thoroughfare of the Strand as the Courts of Chancery are from the omnibus traffic of Chancery Lane. We have heard, indeed, that it has been proposed, by no mean authority, to place the three Vice-Chancellor's Courts in a building still nearer to Chancery Lane, where it would be scarcely possible to avoid the incessant noise of numerous carriages.³

3. *Air and light* may surely be obtained in the midst of eight acres of ground, with a street of 100 feet on one side, 60 or more if necessary, on another, and flanked by lateral streets of 30 or 40 feet!

4. *Convenient access* to the Courts will clearly be far better secured on the Strand site than that of the Fields of Lincoln's Inn. The edifice will be in the very centre of the Metropolis, in the direct way from the Houses of Parliament to the City of London, the Royal Exchange, the Bank of England, the India House, and all the other great resorts of Metropolitan busi-

ness. Temple Bar, with two great arches, might divide the stream of carriages, one proceeding eastward, the other westward.⁴

Objection has been made to the inconvenience of mounting the proposed bridge on one side, and descending on the other. It is absurdly assumed that this will be the only, or the chief, access, but it is suggested merely to save the inconvenient scramble which frequently now occurs in crossing from the Temple to Chancery Lane. We suppose when the Courts are erected, that it will be in the power of the Practitioners in the Temple to remain in their chambers and offices until their clerks inform them they are wanted in Court. They will then conveniently cross the covered arch, instead of waiting in bad weather till they can rush successfully between the passing carriages. Surely this will be far preferable to a walk in wig and gown as far as Lincoln's Inn Fields. The "Old Reformer," indeed, partly falls into the plan in another part of his pamphlet, for he would have a sort of legal arcade all the way from the Temple to the shrubbery in the Fields!

The "repose" of the Lincoln's Inn Fields site is lauded with great enthusiasm. Objection is made to a carriage-opening in continuation of Serle Street, through Turnstile, which, it is said, will disturb the serenity of the great Tulkingshorns; but along this, the eastern side of the quadrangle, there are no chambers of lawyers, but a dead wall; and, inconsistently enough, when the present noble garden is proposed to be despoiled for the sake of the new building, then by way of compensation for taking three acres of open space, new passages are to be made into this large metropolitan "Lung:" all the Turnstiles are to be made streets, and salubrious currents of air let in from divers avenues—north, west, and south. Where, then, will be the quietude, the repose, and seclusion, which the trustees and owners of the quadrangle profess to hold in such high estimation?

In answer to the claim made on the part of the public for the preservation of their unrivalled space of 11 or 12 acres in the heart of the metropolis, according to the trust on which the ground is held, we are told for the first time that the square is badly drained, and that the decay of the

² See the Plan of the Site and of the Inns of Court and Chancery and the whole Law District in the Legal Observer of 8th May, 1852.

³ The side streets on the east and west might be closed during the sittings of the Courts.

⁴ To remove the difficulty to foot passengers of crossing a broad street, a safe resting place on each side of the pier of the arches might be provided.

leaves and flowers of the garden and the damp of the land are very prejudicial to the health of the inhabitants. If this be so, let the trustees do their duty, construct sufficient drains, and employ a sufficient number of poor labourers to clear away the fallen leaves and other decaying vegetable matter, and let the gardeners keep the trees and underwood in healthy order; and the sooner the better, let new avenues be opened to give those "rapid draughts of air to dry and purify the ground" which exist in the other squares and open spaces in the metropolis.

Consider also the public advantage of removing a wretched and most unhealthy collection of the narrow lanes, courts, and passages, which lie between Chancery Lane and New Inn and Clement's Inn. It is indeed universally admitted, that no greater improvement could be effected in the metropolis than the new streets proposed in connexion with the new Courts. The narrow passage at Temple Bar is the subject of great complaint, and avenues are urgently demanded from Fleet Street and the Strand to Holborn.

The apprehension that the chambers proposed to abut east and west on the new Courts will injure the chambers in Lincoln's Inn Fields, appears to be an excess of anxiety on the part of the worthy proprietors. The concentration of all the Courts and all the Offices of Law and Equity—constituting a great mart for all kinds of legal business—cannot fail to bring within its neighbourhood, not only a far larger number of lawyers of the various departments of the Profession; but, along with these, a corresponding increase of auxiliaries:—law booksellers, law stationers, &c., &c. We believe, indeed, that the Attorneys and Solicitors, instead of being scattered, as they are, in various parts of the metropolis, will gradually congregate in the Law District; and as the Advocates and Proctors of Doctors' Commons have succeeded in bringing within their own precincts all who have any business in the Ecclesiastical Courts, so the Superior Courts of Law and Equity, when brought into one central locality, will induce their clients to resort to that legal region and greatly facilitate the transaction of business.

It is creditable to our Law Reformer that he puts the issue of the question of site upon no petty ground of *parsimony*. "The cost," he says, "should not be too nicely scanned: the *best site* is worth pur-

chasing at any price." We heartily agree in this wise and liberal view. The edifice is to be raised for many future generations; it is to form the Great Palace or *Hall of Justice* of the whole kingdom, and we firmly believe that, but for the warlike preparations now in progress, the whole nation would be willing to charge the Consolidated Fund with 30,000*l.* a year for the interest of a million of money, in order to effect this important and necessary measure. The unclaimed and *unclaimable* surplus interest in the Court of Chancery will, however, render a call upon the Treasury unnecessary, and therefore we may confidently hope that no time will be lost in bringing in the Bill.

ECCLESIASTICAL COURTS' REFORM.

REASONS FOR TRANSFERRING THE GRANTING PROBATES AND ADMINISTRATIONS TO THE COURT OF CHANCERY, INSTEAD OF A NEW COURT OF PROBATE.

[From a Correspondent.]

THE new Court of Probate would not have sufficient business to occupy its time. The Prerogative Court has not hitherto sat more than 20 days in the year,¹ and the number of contested wills have not been more than 40, and the number of motions not more than 250 in the year.²

The Master of the Rolls and the three Vice-Chancellors, in 1850, the earliest period to which the printed volumes extend,³ made 8,306 special orders and decrees,—viz., on motions, 3,096; on petitions, 3,724; on the hearing of causes, 1,263; pleas and demurrers, 63; claims, 160.—Total, 8,306. Averaging upwards of 2,000 for each Judge.

The district registrar would have but little occupation, as the wills proved and administrations granted in Courts other than the Prerogative Court in 1852 were 15,393, or three-fifths of the whole, which amounted to 25,771.⁴

It is proposed to appoint 27 district registrars (see page 43), so that each would have less than one thousand wills or administrations, or about three per diem.

The expense, also, of obtaining probate

¹ See Report of the Commissioners, 11th January, 1854, Answer 85.

² Answer 154.

³ Parliamentary Papers, 1851, No. 51.

⁴ Answer 205.

or administration will also be considerable, and not less than the present amount, as the executor or administrator will have to employ a solicitor residing near him, and this solicitor must employ an agent at the town where the registrar resides, and as the probates and administrations under 450*l.* form half the number granted,⁵ it is obvious that the expense will fall on the class of persons who can least afford to bear it, and to whom a few pounds is a great object.

The effect of granting exclusive privilege to the proctors for an unlimited period will ultimately be found to constitute a similar monopoly to that now existing, and create an obstacle to further reform similar to that of the late Six Clerks' Office.

The present proctors, both in town and country, are in a different situation to the clerks in Court in the late Six Clerks' Office, inasmuch as the former are not, like the latter, limited to a specific number, and consequently are not legally entitled to claim compensation more than were the London attorneys on the establishment of the County Courts.

There would, however, be no objection on the part of the public or the solicitors to the proctors being entitled to practice in London, so far as proving wills and obtaining administration in common form, exclusive of the solicitors, for a period of seven years, and at the expiration of that period, proctors then practising to be admitted on the roll of solicitors. In the meantime, and even afterwards, they would probably, from their local connexion, become the regularly employed agents of the country, and, perhaps, many of the town, solicitors, in matters relating to proving wills and administration.

SUGGESTED SCHEME.

1. Transfer the duties of the Judges of the Prerogative and other Courts, so far as relates to granting probates and administration, to the Court of Chancery, and in case the present force of Judges be insufficient to take the additional duties, appoint an additional Vice-Chancellor with staff of registrars and chief clerks for Chambers, and the probate and administration business to be taken by the Master of the Rolls and Vice-Chancellors indiscriminately.

The Chamber business is on the increase, and more force than is at present provided will be required, or the proceedings will be delayed to the prejudice of the suitors.

2. An office for granting probates and admini-

nistrations should be established in London, consisting of three registrars, six assistant registrars, and the requisite force of clerks. The persons to be first appointed should be selected from the present effective officers in Doctors' Commons, and any vacancies to be filled up by appointing the senior assistant clerks, if deemed competent by the Lord Chancellor, and any vacancy among the assistant-registrars should be filled up during the next seven years by any proctor, and after that period by a solicitor, to be appointed by the Lord Chancellor, but whose age at the time of appointment should not exceed 30. The clerks should be appointed by the registrars, with the approbation of the Lord Chancellor.

The wills and administrations amount to about 26,000 per annum, so that with a staff of three registrars, six assistant-registrars, and 12 clerks, and assuming that each officer was in attendance for 250 days in a year, there could be no difficulty in getting through the business, there being no more than about 100 wills and administrations per day.

3. The establishment might be divided into three departments, and in each department one registrar, two assistant-registrars, and four clerks. The clerks would transact all the ordinary business, under the superintendence of the respective assistant-registrars, and the assistant-registrars would, under the superintendence and direction of their respective chief-registrars, dispose of cases of a special nature. The chief-registrars, or two of them at least, would meet daily, and decide all questions involving the refusal of probate or grant of administration, and proctors or solicitors would be heard by them.

4. An appeal from the registrars' decisions would lie to the Master of the Rolls, or one of the Vice-Chancellors and the registrars would certify briefly the grounds of their decision. The appeals would be brought on by summons, and heard either in Chambers or in Court, at the discretion of the Judge who should be at liberty to direct any question to be decided by a jury; but when the property in question was under 500*l.* it might be referred to the County Court.

The County Court Judge, or Judge of the Superior Court, should be empowered to change the venue or grant a new trial, but the result should not be conclusive on the Equity Judge.

5. When the property did not exceed 500*l.* per annum, the duties suggested to be performed by the district registrars should be entrusted to the clerk of the County Court for each district (except within 10 miles of Lincoln's Inn Hall).

The wills and administrations under 500*l.* are about 13,000 annually, and the County Court districts beyond 10 miles are about 490, so that there would be less than 30 cases, or not quite one per week for each clerk.

NOTICES OF NEW BOOKS.

The Lunacy Regulation Act (1853), and the General Orders in Lunacy; with an Introduction and copious Index. (Forming a Supplement to the "Outlines of the Practice in Lunacy." By JOSEPH ELMER, of the Office of the Masters in Lunacy. London: Stevens & Norton. Pp. 150.

MR. ELMER, in his Introduction, notices ably and concisely the changes effected in the Law and Practice in Lunacy by the recent Act and Orders, and then proceeds to give in *extenso* the Regulation Act (16 & 17 Vict. c. 70), and the General Orders of Nov. 7, 1853.

There is also added a full and carefully compiled Index of 66 pages, which affords easy reference to the Act and Orders.

Unsoundness of Mind considered in relation to the Question of Responsibility for Criminal Acts. By SAMUEL KNAGGS, M.R.S., London, Licentiate of Apothecaries' Company. London: Churchill. 1854. Pp. 96.

THE learned Author divides his treatise into the following chapters:—1. Introduction; 2. On mind, sound and unsound; 3. Punishment in reference to crime and lunacy; 4. Unsound mind as a responsible condition; 5. Unsound mind as an irresponsible condition; and 6. Recapitulation—Practical suggestions—Conclusion.

We heartily recommend a perusal of this essay to all those who, like its Author, hope that "such interest may be kindled, as shall lead to the introduction of measures to ensure to crime its more certain punishment, to the helpless madman more certain protection, and the preservation of the honour and peace of those families who have the great misfortune to enrol amongst their members that human being infinitely to be pitied—the criminal lunatic."

The Journal of Psychological Medicine and Mental Pathology. Edited by FORBES WINSLOW, M.D., D.C.L., President of the Medical Society of London. No. 25. January 1, 1854. London: Churchill. Pp. 158.

THE part now before us contains articles on the following subjects, alike interesting to the criminal lawyer, the philosopher, and to the philanthropist:—

Modern Demonology and Divination; Elements of Psychological Medicine; on the Hygiene of Crime; General Paralysis of the Insane; Logic and Psychology; the Pilgrimage of Thought; the Manchester Royal Lunatic Asylum; Professor Valentin's Physiology; on the Religious Instruction of the Insane; the Lettsonian Lectures. No. 1. "On the Psychological Vocation of the Physician," by the Editor; the Non-restraint System; Statistics of Insanity by Sir Alexander Morrison, M.D.; upon the Morbid Desire to Kill; Miscellaneous notices.

POINTS IN EQUITY PRACTICE.

APPEAL FROM ORDER ON CLAIM.—RIGHT TO BEGIN.

HELD by the Court of Appeal, that where an appeal on a defendant's behalf is from the whole order made upon a claim, the plaintiff is entitled to begin, in analogy to the practice in a cause appeal. *Neathway v. Read*, 3 De G., M'N. & G. 18.

In a previous case, *Sims v. Helling*, 2 De G., M'N. & G. 291, a similar direction was given.

CREDITOR'S SUIT.—ALLEGATION OF DOCUMENTS BEING FORGED.—PRODUCTION TO SCIENTIFIC WITNESSES.

A creditor supported his claim at Chambers on a reference in an administration suit, by the production of five documents, a list of which he afterwards scheduled on his examination. An order was made on the motion of the plaintiff, who believed such documents to be forged, for their deposit with the chief clerk, and for liberty to have them produced for examination by scientific persons, for the purpose of testing their genuineness—the creditor's solicitor to be present at such examination. *Groves v. Groves*, 1 Kay, xix.

POINTS IN COMMON LAW PRACTICE.

DECLARING WITHIN A YEAR.—SERVICE OF NOTICE OF DECLARATION FILED.

A WRIT of summons was issued in April, 1852, and was served in the August following, and on November 13, an appearance was entered for the defendant, sec. stat., and the declaration was filed, according to the old practice, but notice of declaration was not served on the defendant until November 12,

1853. The 15 & 16 Vict. c. 76, came into operation in October, 1852. A rule was made absolute to set the declaration aside, on the ground the plaintiff had not declared for more than a year after the service of the writ of summons. *Parke, B.*, said, "The term to 'declare' means either the delivery of the declaration itself or the giving notice of it, so that a plaintiff does not declare until he informs the defendant of the cause of action." *Alderson, B.* referred to *Worley v. Worley*, 2 T. R. 112. *Edon v. Roberts*, 9 Exch. R. 227.

REPLICATION. — TRIAL OF ISSUE. — SHORT NOTICE IF NECESSARY.

The defendant, who was under terms to take short notice of trial before the sheriff, *if necessary*, delivered pleas of never indebted and set-off on August 5 last, to which the plaintiff delivered a replication, joining issue on the 10th, and delivered the issue on the 11th, stating the award of the writ of trial to try the issue joined between the parties, and indorsed with notice of trial for the 18th Aug.

A rule nisi was obtained to set aside the writ of trial and all subsequent proceedings, on the ground that there were two issues, and that the defendant was only bound to accept short notice of trial *if necessary*.

In overruling these objections, *Pollock, C. B.*, said,—"Since the Legislature has abolished special demurrers, we are bound to follow out that spirit, and act upon what the parties really meant by the language used, and not give effect to mere technicalities." *Flowers v. Welch*, 9 Exch. R. 272.

ORDER IN CHANCERY.

TRANSFER OF CAUSES.

WHEREAS, from the present state of the business before the Lord Chancellor and Master of the Rolls respectively, it is expedient that a portion of the causes, claims, and special cases set down before the Lord Chancellor to be heard before the Vice-Chancellor Sir William Page Wood, should be transferred to the Master of the Rolls' book of causes for hearing. Now I do hereby order, that the several causes, claims, and special cases set forth in the schedule hereunto subjoined, be accordingly transferred from the book of causes of the Vice-Chancellor Sir William Page Wood to that of the Master of the Rolls. And I do further order, that all causes, claims, and special cases so to be transferred (although the bills in such causes, and the claims, and special cases, may have been marked for the

Vice-Chancellor Sir William Page Wood, under the orders of Court of the 5th May, 1837, and notwithstanding any orders therein made by the Vice-Chancellor Sir William Page Wood, or his predecessors), shall hereafter be considered and taken as causes, claims, and special cases originally marked for the Master of the Rolls, and be subject to the same regulations as all causes and claims and special cases marked for the Master of the Rolls are subject to by the same orders. Provided, nevertheless, that no order made by the Vice-Chancellor Sir William Page Wood, or his predecessors, in any causes, claims, and special cases shall be varied or reversed otherwise than by the Lord Chancellor or the Lords Justices.

CRANWORTH, C.

Schedule.

Startin v. Gloucester and Berkeley Canal Company, motion for decree; *Edleston v. Veck*, ditto; *Schuldt v. Kent*, ditto; *Rabbeth v. Squire*, ditto; *Leak v. Jones*, cause; *Kent v. House*, ditto; *Cooper v. Cooper*, motion for decree; *Needham v. Needham*, further directions and costs; *Wright v. Hallam*, cause; *Ward v. Turner*, claim; *Logdon v. Joselyne*, ditto; *Wagstaff v. Oates*, motion for decree; *Bennett v. Adkins*, ditto; *Whitham v. Gill*, cause; *Freeman v. Laslett*, further directions and costs; *Crosse v. Young*, ditto; *Whitehouse v. Thompson*, claim; *Attorney-General v. Sturge*, cause; *Barber v. Sterry*, ditto; *Goldsmid v. Stonehewer*, claim; *Harper v. Richards*, ditto; *Taylor v. Cargill* (3 titles), further directions and costs; *Sillibourne v. Newport*, motion for decree; *Beech v. Keep*, cause; *Burton v. Starkey*, motion for decree; *Cook v. Sturgis*, claim; *Pollard v. Pollard*, ditto; *Weathall v. Bannister*, motion for decree; *Hoffman v. Duncan*, ditto; *Fisher v. Balls*, ditto *v. ditto*, claim; *Daniell v. Miller*, ditto; *Hitchon v. Ormerod*, motion for decree; *Goldney v. Crabb*, cause; *White v. Grane*, ditto; *Bull v. Champnies*, motion for decree; *Storry v. Walsh*, special case; *Espey v. Lake*, cause; *Turner v. Newland*, special case, *Bituminous Shale Company v. Cassal*, claim; *Burbidge v. Parratt*, cause; *Bainbrigg v. Swabey*, claim; *Newman v. Gooday*, ditto; *Rees v. Gwynne*, cause; *Pawson v. Pawson*, ditto; *Evans v. Heath*, exceptions; *Ditto v. Ditto*, further directions and costs; *Ward v. Burbury*, special case; *Alden v. Stamps*, motion for decree; *Darby v. Darby*, special case; *Holland v. Treacher*, further directions and costs; *Attorney-General v. Hudson*, cause; *Turnbull v. Wawn*, further directions and costs; *Miller v. Hayhurst*, motion for decree; *Durant v. Jewell*, claim; *Smith v. Smith*, motion for decree; *Lewis v. Clowes*, cause; *Eberhardt v. Roberts*, claim; *Fenn v. Death*, cause and petition; *Mayor of Faversham v. Ryder*, ditto; *Goodfellow v. Goodfellow*, special case; *Harper v. Harper*, claim; *Semple v. Hagell*, ditto.

CRANWORTH, C.

HOUSE OF COMMONS.

PUBLIC PETITIONS.

EVERY member presenting a petition to the House must affix his name at the beginning thereof.

Every petition must be written and not printed or lithographed.

Every petition must contain a prayer.

Every petition must be signed by at least one person on the skin or sheet on which the petition is written.

Every petition must be written in the English language, or be accompanied by a translation, certified by the member who shall present it.

Every petition must be signed by the parties whose names are appended thereto by their names or marks, and by no one else, except in case of incapacity by sickness.

No letters, affidavits, or other documents, may be attached to any petition.

No reference may be made to any debate in Parliament.

No application may be made for any grant of public money, except with the consent of the Crown.

All petitions, after they have been ordered to lie on the table, are referred to the Committee on Public Petitions, without any question being put; but if any such petition relate to any matter or subject with respect to which the member presenting it has given notice of a motion, and the said petition has not been ordered to be printed by the Committee, such member may, after notice given, move that such petition be printed with the votes.

WOLVERHAMPTON LAW ASSOCIATION.

ANNUAL MEETING AND REPORT.

THE Annual General Meeting of the Members of this Society was held on the 14th January, Mr. *Crisp* in the Chair.

The following Report of the Committee was read:—

“Your Committee have had their attention called to but few subjects requiring special consideration. The present position and prospects of the Profession, whilst they present many points for grave reflection, have appeared to your Committee to afford but few opportunities for useful action. They have therefore deemed it their duty, rather to watch, than to recommend reforms either in legisla-

tion or practice. To such subjects as have been brought before them they have given their best consideration; and the following will appear by the minutes of their proceedings, to have chiefly engaged their attention:—

“The question of legal education was brought before them by circular from the Metropolitan and Provincial Law Association. Your Committee fully concurred with that Society, in the position that very insufficient means at present existed, for insuring an adequate amount of either general or legal education to clerks under articles; and they could not shut their eyes to the fact, that in no small proportion of Practitioners throughout the kingdom, is exhibited the disadvantage, and in some cases, the evil of admitting ill-educated members into their ranks. At the time when the Profession appeared to be on the eve of obtaining the long sought relief from the unjust burthen of certificate duty, it was thought a fitting opportunity for exertions to provide a more effective and satisfactory test and guarantee of a solicitor's social status and respectability. With this view your Committee, after some discussion, submitted the following propositions in reply to the circular:—“That no one should be admitted without previously obtaining a certificate from competent persons to be appointed for that purpose, of at least an elementary knowledge of English, French, Latin, history, geography, and mathematics, including book-keeping, or of the majority of those subjects, and of a proficiency in four of the five branches of Law. And that, at the examination in the branches of Law, the candidates who pass be arranged in two classes; the first to consist of those who pass well, the second of those who barely pass.”

“It was not then considered expedient to be stringent in the first step of reformation: but, from the extraordinary and unexpected manner in which the Bill for the abolition of the tax referred to was ultimately dealt with, especially on the voluntary reduction by the Chancellor of the Exchequer, of the stamp duty on clerks' articles, the question of education has become not only more important and pressing, but a more marked and decided measure for preserving the honour and respectability of the Profession, may possibly be demanded. Your Committee venture to recommend this subject to the serious consideration of their successors in office, and to the thoughtful attention of the entire Profession, individually and collectively.

“The other principal matter which engaged your Committee's attention was the scale of the Steward's charges for searching the Rolls of the Manor of Stow Heath, which, in consequence of the dissatisfaction expressed by several practitioners, appeared to require investigation. The subject, after consideration in general Committee, was referred to Mr. Rutter and Mr. Dent for the purpose of making enquiries respecting the legality and propriety of such charges, and to report the result. Those gentlemen undertook the task, and drew up a very careful minute of their la-

hours, in which they arrived at the conclusions—first, that the charges in question, viewed in reference to ancient usage, were illegal; and secondly, that by a comparison with fees taken by other Stewards (some of extensive experience), they were excessive and not based upon a proper principle. As the whole subject has been fully considered by them, which the Report will show, it may be useful to record here their opinion as to what is a fair remuneration to a Steward for his trouble in making searches himself, or in producing the Rolls to others. They think 'that this must be estimated by the time occupied, provided there be indices to the Rolls, and 6s. 8d. an hour, or for the fractional part of an hour, appears to them both by analogy and otherwise to be a proper fee.' If there be not indices then they think 'that by reason of the obvious failure of duty on the part of the Steward, by his omission to supply them, the fee should not have reference to time, but that it should be an unvarying fee of small amount.' The analysis of the information obtained by the two gentlemen above-named, appended to their report, will be found to support their views, and will probably be useful for reference on other occasions. Since this report was handed in, but before the Committee had met to consider it they have the satisfaction to state that Mr. Holyoake voluntarily offered to alter his scale, and in future to charge 6s. 8d. an hour, or for any fractional part of any hour.

"It is considered desirable that a new catalogue of the library should be published; and the Secretary, with the assistance of two members of the Law Students' Society have commenced the work, by collating the present catalogue with the books on the shelves, and entering those purchased since it was printed. An additional supply of reports and some standard treatises is also recommended, but in the present unsettled state of things in reference to both classes, your Committee have felt it a difficulty in deciding on the works to be ordered; and as it is likewise a question of finance, they have deemed it to be the more prudent course to postpone both these matters to the next year, when the balance in the hands of the Treasurer will at least afford some guide on the latter point.

"Your Committee having frequently experienced the inconvenience of the rule requiring a quorum of five members at quarterly and special meetings, under Rule XV., recommend that in future, at all meetings of the Committee, three members present at the Committee, shall be sufficient to form a quorum.

"The members of Committee who retire from office, and are ineligible for re-election under Rule VIII., are Mr. Pinchard, Mr. Underhill, and Mr. Riley."

The following Resolutions were then passed:—

1. That at the Quarterly Meetings, and also at Special Meetings under Rule XV., three members present of the Committee shall, in future, be sufficient to form a quorum.

2. That the report of the Committee now read be received and entered on the minutes.

3. That Mr. Dent be elected to fill the office of President, and Mr. A. H. Browne the office of Vice-President of the Association and Library until the general meeting of 1955.

4. That Mr. R. H. Price be elected Hon. Secretary and Treasurer of the Association until the general meeting in 1855.

5. That Mr. Crisp, Mr. Deakin, Mr. Rutter, Mr. Thorne, Mr. Manby, and Mr. Hayes, be elected members of the Committee.

6. That the report of the Committee, and the resolutions passed at this meeting, be printed, and a copy sent to each member of the Society, including the honorary members, and also to the solicitors residing within the Society's district, and to the Secretaries of the Metropolitan and Provincial Societies.

7. That the thanks of the meeting be given to the Society's officers and Committee of the past year, for their attention to the interests of the Society.

STUDY OF THE LAW.

WE recommend to the Law Student the following advice from the able Introductory Lecture of Mr. Broom on the Study of the Law, delivered in the Inner Temple Hall on the 14th November last:—

"In connexion with the study of the Law, I must advert to the recently instituted system of legal instruction, as calculated to afford the surest and readiest means for its successful prosecution. In no science, indeed, so peculiarly as in the legal, do lectures seem adapted to assist the learner and to facilitate his progress; for this, various reasons may be given: the dearth of good elementary treatises—the infinity of decided cases—the mode adopted in reporting them, which, whilst it occasionally perplexes even the practitioner, almost uniformly bewilders and discourages the student—and lastly, the vast and constantly increasing bulk of our statute book, from time to time rendering so many of those reported cases obsolete and useless. Such are some only of the reasons why mere private study cannot (save by an undue and often impracticable sacrifice of time and labour) render a man fit to discharge the duties which will devolve upon him in practising the law or even ensure him a competent knowledge of its simplest elements.

"Some extraneous aid in the process of acquiring legal knowledge has accordingly, in all times and alike in every department of the Profession, been recognised as indispensable; and attendance at the chambers of the special pleader, equity draftsman, or conveyancer, has been strenuously advocated. For him, indeed, who intends to practise at the Common Law Bar, I do conceive that some opportunity of

observing the actual routine of business in a pleader's chambers is essential; and for this no substitute has, under the existing system of legal education, been suggested or could easily be devised. But, then, I entertain the conviction, that the principles of pleading, especially under the simplified form which that science has latterly assumed, are likely to be much more methodically, and therefore much better and more efficiently, taught in the lecture room, than amidst the hurry of business, the interruption of clients, and those absences and engagements of the preceptor, which attendance at Judges' Chambers and the preparation of urgently required opinions from time to time necessitate.

"But further, in order that the science of pleading and the method of applying it may be understood, the fundamental rules of law must have been mastered; for pleading is the language of the law, and he who is ignorant of the latter cannot fathom or comprehend the former. Much patient and persevering study—much careful examination, not merely of the principles of law, but of the application of those principles to its leading branches—much pondering over the rules of evidence, and some considerable degree of familiarity with the practice of our Courts, should, in my judgment, precede any attempt at minute acquaintance with the formulæ and details of pleading, and should be regarded as in themselves constituting the sure and enduring basis of a sound legal education.

"For the reason just stated, I should accordingly suggest that attendance, for a few months only, at a pleader's chambers (and, if found practicable, at a conveyancer's likewise), should be regarded as the most fitting *termination* to the curriculum of study afforded by the Inns of Court."

Mr. Broom then proceeds to consider the important question, *By what particular process is the great basis of legal knowledge to be laid?* What plan, method, or course of study, will best perfect and consolidate it?

"To this," he says, "I would reply—acquaint yourself in the first place with those broad lines of demarcation which separate from each other the leading branches of our Common Law; familiarise yourself to some extent with the geography and general features of the country which you are about to traverse; learn to distinguish between the Law of Contracts and of Torts—between Quasi-criminal and Criminal Law. Whilst engaged in this preliminary survey, your attention will necessarily be directed to the nature of Legal Rights and Remedies generally—to the distinction which exists and the mode of discriminating between Public and Private Wrongs—to the true foundation of that claim which the community at large puts forth to interfere in certain cases with the property and concerns of individuals.

"Having thus commenced, apply yourself in the next place to the first named of the above great branches of our Common Law, I mean, the Law of Contracts; and, after obtaining some insight into its respective subdivisions, concentrate your attention upon those great principles which are alike applicable to all of them.

"For instance, after investigating the meaning and signification of the word Contract, and comparing the definitions¹ of that term given by our best writers, you will proceed to inquire into the requisites and essentials of a valid contract, that is, of a contract which can be made the foundation of an action; you will find that some contracts must have been expressed in writing, in order to be enforceable at law—that most must have been founded on good consideration (the meaning of which term will, of course, have to be examined); you will further find that a contract must not be tainted with fraud—that it must not contravene the law—that it must not be *contra bonos mores*, nor opposed to what sound policy enjoins.

"But, assuming that the contract in question is unimpeachable when tried by the tests just indicated, and that it is not objectionable on any more technical grounds, *ex. gr.* as having been made between parties, one or other of whom was at the time of contracting affected with legal incapacity, you will then conclude that it may be made the subject of an action for damages before a competent tribunal. But why should this be? Are not contracts and agreements in their terms and language infinitely diversified? Do they not relate to matters dissimilar in kind and differing from each other as widely as do the concerns of men? Can it be that human sagacity, having anticipated every possible concatenation of circumstances, has declared how far and under what conditions the contracts originating from them shall be binding? Such questions may suggest themselves—although perchance not mooted in legal treatises—to the inquiring student; and further research will then show him, that the right of action for breach of a contract or agreement is not in general referable to any express enactment of the Legislature, but springs from that *jus quod consensus fecit*, of which we read in the Roman Law—from the necessity which exists, with a view to the well-being of the community—that every man should fairly and honestly perform what he has undertaken to do; so that *obligatio est juris vinculum quo necessitate astringimur alicujus rei solvendæ secundum nostræ civitatis jura*;² *natural law* (if I may use the term) says, that contracts, if not impeachable on special grounds, shall be binding; and *municipal law*

¹ "In studying the law, a habit of thoroughly testing proposed definitions, and storing up in the mind such as appear sound, may safely be recommended."

² "Inst. lib. 3, tit. 14."

indicates the manner in, or means by, which they shall be enforced.³

Having mastered the fundamental principles of the Law of Contracts, the next consecutive steps in advance will consist in examining separately, as set forth in our best treatises, each of its leading subdivisions.

"In naming these Treatises—in explaining these propositions—in selecting and discussing these cases, (comprising perhaps some of the most recent decisions of our Courts), the more important of those functions which devolve upon the Reader will necessarily be called into play. In his public lectures also, and more especially with his private class, will it be his duty to expound legal subtleties—to analyse judicial reasonings—to extract from voluminous enactments such portions as may be of practical concern or vital import, and still cautiously to guide the student through the wilderness of repealed and repealing Statutes, the chaos of conflicting cases, and through the uncertain shadows cast by projected changes, to that path which may lead to honourable success.

"I but just now instanced the Law of Contracts, and bestowed upon it a few brief remarks, with a view to giving some definite idea of the plan which I conceive should be adopted either in acquiring legal knowledge or in communicating it to others through the medium of public and private lectures. It would be very easy much more minutely to illustrate the plan proposed by further reference to the branch of law above mentioned, or to exemplify it in relation to the Law of Torts or to Criminal Law. In the former, commencing with an inquiry into the nature of an actionable wrong, of *damnum sine injuria*, and of damages assessable by a jury, and then tracing out specifically the remedies *ex delicto* which our law provides for injuries whereof she takes cognisance; in the latter, exemplifying by opposite instances the spirit of Penal Laws and the object proposed in the punishment of crime, and further facilitating an acquaintance with the criminal portion of our Statute Book, by clearing away from it such portions as may be obsolete or useless; but I will not risk incurring the charge of prolixity by entering upon such subjects. Enough has, I think, been said upon this part of my theme, to enable any one who is so minded to pursue it; and, if much more were said, it would still be true, that the efficacy of a system of education must mainly depend upon the manner in which it is practically developed—that its merits or demerits will most surely be tested by its fruits—that praise or blame will be awarded to it according as it leads to permanently good results or ends in failure.

"But, whatever and however excellent be the plan of legal instruction adopted, with what energy soever it be carried out, much still will

it depend upon each individual student, whether or not the plan so adopted shall to him be productive of advantage.

"And here I must at once express my conviction, that, with a view to acquiring a thorough grasp of elementary legal principles through the medium of lectures, attendance at the Reader's Private Course is indispensable; for, there, questions can be discussed—difficulties suggested and removed—matters collateral to, though bearing upon, the main subject of inquiry can, if necessary, be investigated—advice and directions for the conduct of professional studies can be given much more amply and much more satisfactorily than in the Public Lecture Room.

"Let it not be supposed, however, that I would attach little weight or importance to the Public Lectures. Far from it; I conceive them to be essential to the full development of the educational system which has been so judiciously established. Indeed, for the more advanced student, I am willing to admit, that attendance at the Public Lectures merely might suffice to refresh his memory with regard to what he has once read, and to exercise his powers—which may have become somewhat dormant—of analysis and deduction.

"But, with the habit of attending lectures and of noting down what is there said, must, of course, be combined private study and research directed through the various fields of learning traversed by the Reader: constant but not immoderate application, a power of abstraction and much patient thought will aid more than aught else in enlarging the sphere of knowledge, and in improving and strengthening the judgment.

"Common sense also, which has been described as the 'firstborn of reason,' is in legal researches, as in the ordinary concerns of life, an invaluable possession, and conduces to that happy power of weighing evidence and discriminating between facts to which the ultimate success of so many distinguished lawyers has justly been ascribed.⁴

"It is not my intention upon this occasion to enlarge further upon the mental qualifications which are necessary to command success in the study of the law, for these have been ably discussed by various distinguished writers who have applied themselves to the subject.⁵ But I do desire specially to direct the attention of the student to two points arising from the matter immediately before me. At the outset, then, of his private reading, I would urge upon him the importance of a perpetual recurrence to first principles;⁶ and whilst subsequently

⁴ "As to 'common sense,' and the meaning of that term, see Reid on the Mind, Essay 6, chap. 2.

⁵ "Which is fully and admirably treated in Mr. Warren's Introduction to Law Studies.

⁶ "I hold it to be certain, and even demonstrable," says Dr. Reid, Essay 6, chap. 4, 'that all knowledge got by reasoning must be built upon first principles.'

³ "See the judgment of C. J. Marshall in *Oyden v. Saunders*, 12 Wheaton R. 213."

pursuing his inquiries through the less elementary portions of legal science, I would suggest to him the desirableness of not seldom retracing the path which he may latterly have trodden—of carefully and repeatedly testing the soundness of each consecutive link in that particular chain of reasoning to which his conclusions may be attached. This habit is essential to the attainment of logical precision in the art of reasoning, and, if acquired, will enable its possessor to advance with confidence from given premises to unforeseen results. It should be brought into play, not merely in the perusal of law treatises, but in the examination of reported judgments, many of which are in themselves admirably illustrative of the mode in which minute deductions may be evolved from broad and admitted axioms.

“With the habit just specified, should be conjoined that of systematically storing up in the mind cases of real practical value, the leading facts of which should be committed to memory, and thus be ready for use whenever needed. But it may be said, the task here hinted at is not easy—how may it be accomplished? To this I answer, by associating cases with the principles and propositions which they affirm or elucidate—by classifying cases so that the recollection of one may naturally suggest another; above all, by thoroughly mastering each proposition or principle with its accompanying cases before proceeding to the next.

“In order,” it has been well said, “to retain our knowledge distinctly and permanently, it is necessary that we should frequently recall it to our recollection. But how can this be done without the aid of arrangement? Or, supposing that it were possible, how much time and labour would be necessary for bringing under our review the various particulars of which our information is composed? In proportion as it is properly systematised, this time and labour are abridged. The mind dwells habitually, not on detached facts, but on a comparatively small number of general principles, and by means of these, it can summon up, as occasion may require, an infinite number of particulars associated with them; each of which, considered as a solitary truth, would have been as burdensome to the memory as the general principle with which it is connected.” If, then, the plan which I have above suggested, of associating together principles and cases in the mind be systematically and habitually carried out; if, moreover, this be done gradually, and too much be not attempted in the first instance, I see no occasion for resorting to any technical aid to memory; I see no reason why the mind of the law student should not eventually become like a well-prepared and methodically digested volume, each department whereof comprises a series of connected propositions dependent upon each other and sustained by the requisite authorities.

“If this really be so, and that it is I apprehend no experienced practitioner will deny, who shall estimate the value of the faculty of orderly arrangement thus acquired? Who shall say that the science, made so directly conducive to its acquisition, has not *ipso facto* established substantial claim to the respect and gratitude of him who has pursued it?”

SELECTIONS FROM CORRESPONDENCE.

REFORM OF SCOTCH LAW.

SOME reforms have been effected especially with reference to the interminable entails of Scotch estates, which ought long ago to have been placed on precisely the same footing as English entails. The result will be highly beneficial to our northern neighbours—much however remains to be done. I will only instance one case which came under my cognizance a few years ago.

A gentleman of considerable landed property had an illegitimate daughter previously to his marriage with his wife, who was then deceased, by whom he had a daughter, of course legitimate. The legitimate daughter was entitled to large estates (which, if I mistake not, descended to her from a maternal grandmother). The father having involved himself in debt, required her to sell the estates, to which she was so exclusively entitled, to enable him to meet his engagements, which she was by no means disposed to do. He, however, threatened that if she refused complying with his demand, he would marry the mother of his illegitimate daughter, whereby she would be disinherited of all his property. To avoid such a calamity, and to prevent her being bastardized, she consented, and a considerable portion of her fine estate was disposed of. She is now no more.

Surely the sooner such a law receives the attention of the Legislature and is repealed, the better.

CIVIS.

COPYHOLD ENFRANCHISEMENT. — MANOR OF KENNINGTON, PARCEL OF THE DUCHY OF CORNWALL.

I write in the hope that my communication may meet the eye of some person or persons interested in copyhold estates, holders of the manor of Kennington, and to suggest the necessity of a strong and simultaneous action to effect an enfranchisement of the copyhold estates in the manor, on fair and equitable terms, both for the interest of his Royal Highness the Prince of Wales, the lord of the manor, as Duke of Cornwall, and the copyholders.

I am utterly at a loss to imagine why a different law should exist for these copyholders to almost all the other copyhold estates in the kingdom.

The complaints of the tenants of the manor are loud and deep, and to my personal know-

⁷ “Stewart on the Mind, vol. 1, chap. 6, sect. 3.

ledge too well founded. The fines exacted being double and treble those demanded in any other manor.

It remains with the copyholders to call a general meeting to take into consideration their grievances, and to appoint a committee to prepare and present to her Majesty and Parliament petitions for redress. Why not leave the amount of the compensation for enfranchisement to be ascertained by competent professional persons or their umpire, or by the Copyhold Commissioners?

A COPYHOLDER.

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Appointed under the 16 & 17 Vict. c. 78.

[For the previous Lists see pp. 106, 161, 238.]

Barnes, Henry Hickman, 2, Great Winchester Street.

Bischoff, Charles, 19, Coleman Street.

Bloxam, Chas. John, 1, Lincoln's Inn Fields.

Bolton, John Henry, 1, New Sq., Lincoln's Inn.

Boyle, Wm. Ansell, 17, Clement's Inn.

Byrne, Edw., 22, Southampton Buildings.

Combe, John, 9, Staple Inn.

Coxe, Philip Smith, 19, Coleman Street.

Crawley, Geo. Abraham, 20, Whitehall Place.

Crosby, James, 3, Church Court, Old Jewry.

Dunning, Simon, 25, Austin Friars.

Farrar, Frederick, 12, Godliman Street.

Gedye, Nich., 14, George St., Mansion House.

Grane, Wm. James, 23, Bedford Row.

Gray, David, 20, Lincoln's Inn Fields.

Hall, Cheslyn, 16, New Boswell Court.

Harwood, Jos. Unwin, 10, Clement's Lane, Lombard Street.

Helder, Wm., 10, Lancaster Place, Strand.

Hill, Hon. Rivington, 23, Throgmorton St.

Hornby, Thomas, 31, St. Swithin's Lane.

Hughes, David, 13, Gresham Street.

Jackson, Henry, 15, St. Helen's Place.

Janson, Frederick Halsey, 4, Basinghall St.

Jennings, Edward, 9, Chancery Lane.

Jones, Alfred, 15, Sise Lane.

Lepard, Samuel, 9, Cloak Lane.

Linklater, John, 17, Sise Lane.

Lott, Thomas, 43, Bow Lane.

Mortimer, John, 17, Clifford's Inn.

Nelson, Park, 11, Essex Street, Strand.

Newman, Wm., 43, Lincoln's Inn Fields.

Nicol, Hen., 88, Queen Street, Cheapside.

Parker, Henry, 17, Bedford Row.

Parkinson, John, 9, Argyll St., Regent St.

Pike, John, 26, Old Burlington Street.

Pringle, Wm., 3, King's Road, Gray's Inn.

Rickards, Edward Henry, 29, Lincoln's Inn Fields.

Rymer, John Snaith, 5, Whitehall Place.

Sanders, Robert Bradfield, 1, New Inn.

Satchell, John, 6, Queen St., Cheapside.

Sealy, Edw. Forward, 27, Moorgate Street.

Skilbeck, Wm., 19, Southampton Buildings.

Smith, Edwin, 2, Cloisters, Temple.

Stephens, William, 30, Bedford Row.

Stevens, William, 6, Queen St., Cheapside.

Sturney, Herbert, 8, Wellington Street, London Bridge.

Tatham, Joseph, 10, New Sq., Lincoln's Inn.

Taylor, Henry, 15, Church St., Spitalfields.

Thomas, Ralph, 7, South Sq., Gray's Inn.

Thomson, John Duffin, 68, Lincoln's Inn Fields.

Watson, Wm. Henry, 12, Bouverie Street.

Watson, Robert, King St., Hammersmith.

Wilton, Geo. Pleydell, 1, Raymond Buildings, Gray's Inn.

CANDIDATES WHO PASSED THE EXAMINATION,

Hilary Term, 1854.

Names of Candidates.

To whom Articled, Assigned, &c.

Allen, Charles John	• • • • •	Joshua Jullian Allen
Barstow, William	• • • • •	Charles Barstow; Michael Stosks
Beardsall, Thomas	• • • • •	Horatio Barnett
Bell, Edward Samuel	• • • • •	Frederick Smith; John Croft
Birdsey, William	• • • • •	James Josiah Millard
Blesock, William Goodman	• • • • •	William Bush Cooper
Brooks, Jas. Howard, B.A.	• • • • •	Edward Worthington
Brown, James	• • • • •	John Neal
Butler, Abraham	• • • • •	William Butler
Carrick, George Lowther	• • • • •	Robert Richardson Dees; William Carrick
Cave, William Henry	• • • • •	John William Mecey
Chater, Henry	• • • • •	Thomas Chater
Chubb, William	• • • • •	Charles Frederick Chubb
Clarkson, Richard	• • • • •	Ebenezer Thomas Clarkson
Cock, Horatio Searle	• • • • •	Richard Randall; Charles Gardiner
Conway, John	• • • • •	Harry Alexander Ewer
Cooke, John	• • • • •	Edward Cooke
Cooper, Thomas	• • • • •	William Boycott
Dix, John William Scome	• • • • •	Thomas Dix
Fitch, Noel Edgar	• • • • •	John Henry Fitch
Gaskell, Arthur	• • • • •	Henry Coppock; Roger Galsden
Grylla, George William Frederick	• • • • •	Glynn Grylla

Names of Candidates.

To whom Articled, Assigned, &c.

Hall, George Samuel	Stephen Adcock
Harland, Thomas	Sidney Taylor
Hawkins, Geoffry	William Williams
Hayter, Thomas	Richard Edgar Smith ; Thomas Tilson
Holland, Joseph Thomas	Thomas Edwards
Hubbard, Joseph Samuel	Joseph John Hubbard
Hulbert, John Heaville	Henry Skrine Law Hussey
Johnston, Patrick	William Strickland Cookson
Kent, Robert Jackson	Francis Jackson Kent
King, William Warwick	John Linklater
Lamb, James Abner	Henry Lamb ; George Warren Lamb
Leach, John	Thomas Lyon ; George Mounsey Gray
Lumley, Louis Charles	Benjamin Lumley
Lyne, Frederick Lewis	Edward Lyne ; Meaburn Tatham
Marshall, Robert	John Wilson Nicholson
Morley, Ebenezer Cobb	Charles Henry Phillips
Pemberton, William	Philip Stapleton Humberston
Peren, Robert Burchall	Henry Burchall Peren ; Isaac Buckrell Hayward ; William Harding Wright
Pierce, John Timbrell	Thomas Chubb ; James Wells Taylor
Prall, Richard, jun.	Richard Prall ; James Bowen May
Pratt, John Thomas Becher	Robert Brotherson Upton
Rule, William Charles	Herbert Lloyd
Shaw, William	Richard Shaw
Sherratt, Thomas	Thomas Llewellyn
Smith, Tom	Alfred Jones
Smith, William Sidney	Walker, Grant, & Co.
Sutton, Daniel Stephen	Richard Heaton ; William Harding
Swarbreck, Charles M ^c Cartney	Thomas Swarbreck
Tindall, James	James Powles
Todd, Stephen Ellis	Thomas Crust
Ware, Joseph	Richard Bowerman
Watson, Robert William Gifford	Henry Tucker
Weston, Arthur	Robert Weston
Wigg, Carr	Frederick Gwatin
Wilson, Joseph Birkbeck	Robert Benson
Winter, James John	James Winter
Winterbotham, John Brend, jun., B. A., LL. B.	John Brend Winterbotham
Witt, Alexander King	William Henry Moberly
Wright, Richard, B. A., LL. B.	Peter Plimley
Young, Robert	Robert Edward Smithson

NOTES OF THE WEEK.

SETTING DOWN CAUSE FOR HEARING.—
CERTIFICATE OF USHER OF DELIVERY OF
PAPERS FOR USE OF COURT.

THE Vice-Chancellor *Stuart* has directed that no cause attached to his branch of the Court can be set down for hearing in the paper by the registrar, on demurrer, plea, exceptions, further directions, or as an original cause, without a certificate from the usher that the papers for the use of the Court have been delivered to him.

INNS OF COURT.

Mr. Napier has given notice of an address for a Commission to inquire into the state of the Inns of Court, with a view to the improved education of students at law, and establishing a test of fitness for admission to the Bar.

ROLLS COURT.

Notice as to Causes Transferred.

The Master of the Rolls will proceed with the causes transferred from the paper of Vice-Chancellor Wood, on Monday, the 20th inst., but the Master of the Rolls will call over the paper of Transferred Causes, at 3 o'clock, P.M., on Tuesday, the 14th inst., for the purpose of ascertaining whether the parties are ready to proceed in any of them, in which case the Master of the Rolls will take in their order on Thursday, Friday, and Saturday in this week, such of such transferred causes which the parties are ready and willing to have so heard.

Monday, Feb. 13, 1854.

NEW MEMBERS OF PARLIAMENT.

Sir *William Heathcote*, Baronet, D.C.L., for the University of Oxford, in the room of Sir Robert Harry Inglis, Bart., who has accepted the office of Steward of her Majesty's Manor of Northstead.

The Honourable Percy Egerton Herbert, for Ludlow, in the room of Robert Clive, Esq., who has accepted the office of Steward of her Majesty's manor of Hempholme.

Robert Clive, Esq., for the Southern Division of the county of Salop, in the room of Robert Henry Clive, Esq., deceased.

The Honourable Henry William George Paget, commonly called Lord Paget, for the Southern Division of the county of Stafford, in the room of William Walter Legge, commonly called Viscount Lewisham, now Earl of Dartmouth, summoned to the House of Peers.

Henry Wyndham, Esq., for the Western Division of the county of Sussex, in the room of Richard Prime, Esq., who has accepted the office of Steward of her Majesty's Chiltern Hundreds.

COMMON LAW FEES.

Mr. Mullings has given notice of motion that a return be made—1st, of all the fees received by the Masters or other officers of the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas, from the 1st day of Michaelmas Term, 1952, to the day before Michaelmas Term, 1853, inclusive, distinguishing the amounts received for each respective class of fees. 2nd. Of the salaries and expenses paid out of such receipts during the same period, distinguishing the amount of salaries from the expenses. 3rd. Of the pensions paid during the same period to retired officers of those Courts. 4th. Of the compensations paid during the same period to the holders of abolished offices of such Courts.

STAMPING DEEDS AFTER EXECUTION.

The Commissioners of Inland Revenue have extended the time allowed for stamping executed deeds from six weeks to two months.

JUNIOR LAW CLERKS.—PRICE OF PROVISIONS.

We are happy to inform our readers that an eminent Lincoln's Inn firm, in consequence of the high price of provisions, has lately distributed the sum of 50*l.* among their junior clerks.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

(Coram Lord Chancellor and Lords Justices.)

Boyse v. Rossborough. Jan. 18, 19; Feb. 11, 1854.

DEVISEE ESTABLISHING WILL AGAINST HEIRESS-AT-LAW.—JURISDICTION.—DEMURRER.

Held, *dismissing with costs an appeal from Vice-Chancellor Wood, that a devisee was entitled to maintain a bill to establish the will under which she took, against the heiress-at-law, although there was no trust, but the devise was for her own benefit.*

This was an appeal from the decision of Vice-Chancellor Wood (reported 1 Kay, 71, ante, p. 111), overruling a decision for want of equity to this bill, which was filed by the devisee in fee, under the will of a testator, dated in August, 1842, of real property in Ireland, and a mansion house, land, and premises in England. It appeared that the testator's heiress-at-law had instituted proceedings in Ireland to set aside the will as obtained by undue influence, and on the trial of an issue at the Wexford Assizes, a verdict passed against the will, and a new trial applied for by the plaintiff, was refused by the Irish Court of Chancery, from whose decision an appeal was now pending to the House of Lords. The plaintiff was in possession of the English property, having obtained probate of the will, and on the heiress-at-law and her husband refusing to take proceedings in this country to determine the validity of the will, this suit had been instituted to establish it against them.

Swanston, Younge, and J. V. Prior in support;

Solicitor-General, Rolt, and Cairns, contra.

Cur. ad. vult.

The Court said, the question raised by the demurrer for want of equity, was whether a devisee, not in trust but for her own benefit, could maintain a bill to establish the will against the heiress-at-law. Although, perhaps, there might not be an authority exactly in point, there were some from which the right might be inferred: *Berney v. Eyre*, 3 Atk. 386; *Lewis v. Nangle*, 2 Ves. S. 431; *Boote v. Blundell*, 19 Ves. 501; *Grove v. Young*, 5 De G. & S. 38; *Grove v. Bastard*, 2 Phill. 619. The cases cited by the defendants of *Devonsher v. Newenham*, 2 Sch. & L. 199; *Aynsly v. Reed*, Dickens, 249; *Lord Fingal v. Blake*, 1 Moll. 113; *Strickland v. Strickland*, 6 Beav. 77, did not apply. The fact of bills to perpetuate testimony being so numerous, was only because the parties preferred such bills in order to save expense, and to preserve their evidence in the event of their rights being questioned at any future time, and did not prove that they did not possess the right to compel the heir to come in and establish his title at once. The appeal would therefore be dismissed with costs, with 10 days' time to the defendants to put in their answer.

Master of the Rolls.

Milford v. Peill. Jan. 20, 1854.

MARRIAGE SETTLEMENT.—JOINT AND SEVERAL COVENANT AS TO WIFE'S SUBSEQUENT PROPERTY.—CONVERSION.

In the marriage settlement of the plaintiff and her husband was contained a joint and several covenant, that in case any real or

personal estate of the value of 100l. should, during their joint lives, devolve on the plaintiff by gift or otherwise from her father absolutely, and not bound by any trust or provisions otherwise than for her absolute use, the same should be vested in the trustees of the settlement on the trusts thereof. The plaintiff took under her father's will a leasehold house and furniture to her separate use: Held, that they must, nevertheless, be conveyed on the trusts of the settlement, and in specie, as there was no general trust for conversion.

In the marriage settlement of the plaintiff and her husband was contained a joint and several covenant, that in case any real or personal estate of the value of 100l. should, during their joint lives devolve on the plaintiff by gift or otherwise from her father absolutely, and not bound by any trust or provision otherwise than for her absolute use, the same should be vested in the trustees of the marriage settlement, according to the trusts thereof. These trusts were for the benefit of the plaintiff and her husband for their respective lives, and after the decease of the survivor for their issue. On the father's death, it appeared he bequeathed certain leasehold property and furniture and effects in trust for the plaintiff's sole and separate use absolutely, and the question now raised by this bill was, whether the covenant bound the property bequeathed.

C. Chapman Barber for the plaintiff; B. L. Chapman for the defendants, the husband and children; W. D. Fane for the other defendants, the trustees and executors.

The Master of the Rolls said, that the property was bound by the covenant, and that as there was no general trust in the settlement for its conversion, it must be enjoyed in specie.

Horsely v. Giblett. Jan. 23, 1854.

LANDLORD AND TENANT FROM YEAR TO YEAR.—AGREEMENT FOR LEASE.—SPECIFIC PERFORMANCE.

The plaintiff became tenant from year to year of certain leasehold premises under an agreement with the option of a lease for 7, 14, or 21 years. On a sale to the defendant, the lessor advised the plaintiff to take a lease, but he relying on his contract, did not follow such advice, and the sale was completed, subject to the agreement: Held, that the plaintiff was entitled to a specific performance of the agreement for a lease as from the commencement of his tenancy, against the defendant, who had refused to grant the same on the plaintiff applying on the receipt of a notice to quit.

By an agreement, dated in April, 1845, Mr. Hugh Hughes agreed to let certain leasehold premises to the plaintiff from the Lady Day previous as a yearly tenant, with the option of a lease for 7, 14, or 21 years. It appeared that Mr. Hughes being about to sell his

interest in the property, had advised the plaintiff to take an immediate lease, but that the plaintiff, relying on his contract, had not followed his advice; and the sale to the defendant was completed, subject to the agreement. The defendant afterwards gave notice to quit, whereupon the plaintiff applied for a lease under his agreement, and on the defendant's declining to grant the same, this suit was instituted for the specific performance of the contract.

Lloyd and F. T. White for the plaintiff; R. Palmer and W. H. Terrell for the defendant.

The Master of the Rolls said, that the plaintiff was, under the circumstances, entitled to a lease for 21 years from Lady Day, 1845, the commencement of his tenancy, with the option of determining the same at the end of 14 years.

Vice-Chancellor Kindersley.

Bishop v. Countess of Jersey and others. Feb. 11, 13, 1854.

BANKER AND CUSTOMER.—LIABILITY FOR TRANSACTION WITH FORMER PARTNER.

The plaintiff, a customer of the defendants, bankers, had, under the advice of W., then a partner, sold out certain Dutch stock, and arranged to lend 5,000l. to W.'s son on a promissory note payable in five years, with 5 per cent. interest. It appeared that the other partners were not cognizant of the transaction, although the plaintiff's cheque for 5,000l. was entered in the pass book, as well as sums for interest. W. absconded to America, and the promissory note proved worthless: Held, that the other partners were not liable, and the bill was dismissed to recover such 5,000l. from them.

It appeared that the plaintiff was advised, in 1847, by Mr. William Wood, then a partner in the firm of Messrs. Child & Co., bankers, the defendants, and of whom she was a customer, to sell certain Dutch bonds, and to invest the same in Bank stock, with the exception of 5,500l. which he proposed should be advanced on a promissory note to his son at 5 per cent. per annum. A promissory note was accordingly given by the son as security for the repayment of the amount five years after date, and the plaintiff was debited in the pass book with 5,000l. the amount of a cheque she had thereupon drawn in favour of a Mr. Samuel Jackson or bearer. It however turned out that Mr. Wood had appropriated the 5,000l. to his own use, and on his absconding to America in 1849, the promissory note proved valueless, whereupon this bill was filed seeking to recover from the firm its amount.

Solicitor-General and Cairns for the plaintiff, cited Stone v. Marsh, 6 B. & C. 551; Marsh v. Keating, 2 C. & F. 250; Sadler v. Lee, 6 Beav. 324.

Cotton for the Countess of Jersey; Willcock and Ogley for the other defendants, were not called on.

The *Vice-Chancellor*, after referring to the above facts, said that the question was a legal one, and that there was no evidence to show any of the other partners were cognizant of the transaction between the plaintiff and Mr. Wood. Bankers were not bound to inquire into the circumstances under which cheques given by their customers were drawn, and the entry of the interest in the pass book could not be taken to cast any responsibility on the firm, as it was their duty to receive moneys tendered by or on behalf of their customers without inquiry as to the circumstances of such payment. The bill must therefore be dismissed, without costs as against the Countess who waived her right thereto, but with costs as against the other members of the firm who asked for costs.

Vice-Chancellor Stuart.

Johnson v. Webster. Feb. 13, 1854.

CHARGE ON REAL ESTATE. — MERGER ON DEATH OF TESTATOR'S DAUGHTER WITHOUT ISSUE.—SUSISTING CHARGE.

*A testator charged 6,000*l.* on real estates in trust for his daughter on her marriage, but to fall in the event of her death leaving no issue, into the residue and go to his son, to whom he bequeathed his real estates. The daughter married, but died without issue, and the son had bequeathed his personal estate to his mother: Held, that the plaintiffs, who claimed under the bequest to her, were entitled to the 6,000*l.* as a subsisting charge on the estate, and that it had not merged on the daughter's death without issue.*

The testator, by his will, gave a sum of 6,000*l.*, which he charged on his real estates, to trustees in trust to pay the same to his daughter on her marriage, and he declared that in the event of her marrying and dying without leaving issue at the time of her death, the said sum should sink into the residue of his personal estate and go to his son, to whom he devised his real estates in fee. It appeared that on the son's marriage, the real estates were settled, subject to the payment of the 6,000*l.*, on himself for life, with remainder as therein directed, and that on his death, which took place after his sister's marriage, he bequeathed all his personal estate to his mother, under whom the plaintiffs claimed the 6,000*l.* as a subsisting charge on the estates. The daughter died in 1833, without leaving any issue.

Bacon and *Schomberg* for the plaintiffs; *Makins* and *Pryor* for the defendant, contended that the charge had merged on the death of the daughter without issue; *W. H. Harrison* and *Vincent* for other parties.

The *Vice-Chancellor* said, that the charge was an absolute and not a contingent one on the real estates, and that the plaintiffs were entitled thereto, with interest for six years, and made a declaration accordingly,—the costs to come out of the estate.

Vice-Chancellor Hann.

In re Minchin's Estate. Jan. 14, 1854.

TRUSTEES' ACT, 1850. — VESTING ORDER IN PURCHASER OF MORTGAGED PROPERTY.—DEATH OF MORTGAGEE WITHOUT HEIR.

On the sale of property which had been conveyed by the mortgagor and trustee of the residue under the mortgagee's will, it appeared that the legal estate had not passed by the mortgagee's will, and that she was illegitimate, and had died without issue. A vesting order was made under the 13 & 14 Vict. c. 60, in the purchaser, on the production of an affidavit of inquiry having been made, and that there was no heir.

THIS was a petition under the 13 & 14 Vict. c. 60, for an order vesting the legal estate in certain mortgaged premises in a purchaser on the death of the mortgagee, who was illegitimate and had died without issue. It appeared that the mortgagor and the trustee of the residue under the mortgagee's will had conveyed the property in question to a Mr. Kavanagh, who had contracted to sell the same, but that the title was incomplete by reason of the legal estate not having passed by the will.

H. F. Bristowe in support; *Wickens* for the Crown.

The *Vice-Chancellor* said, that an order would be made on the production of an affidavit of inquiry having been made, and that it was not known who was the mortgagee's heir-at-law.

In re Hall and another, and National Land Company. Feb. 11, 1854.

TAXATION ON BEHALF OF OFFICIAL MANAGER OF LAND COMPANY OF MORTGAGEE'S SOLICITORS' BILL OF COSTS ON TRANSFER.

On the purchase for a land company of an estate which was mortgaged, a transfer was taken of the mortgage, and it appeared that the transferee's solicitor signed an account approving of the bill of costs of the mortgagee's solicitors. A petition by the official manager, on the company being wound up, for a taxation after payment was refused.

THIS was a petition, on behalf of the official manager of the above company, for the taxation of the bill of costs of Messrs. Hall & Minett, the solicitors for a mortgagee on an estate purchased by Mr. O'Connor, and which had been paid on taking a transfer of the mortgage.

Rozburgh in support; *Bacon*, contra, was not called on.

The *Vice-Chancellor* said, that as the solicitor for the transferee of the mortgage had signed the account approving of the bill, it was conclusive, and there could be no taxation.

Butchardt v. Dresser. Feb. 11, 1854.

ENROLMENT OF ORDER NOTWITHSTANDING
LAPSE OF MORE THAN SIX MONTHS.—
ORDERS OF AUG. 7, 1852.

An order was made for the enrolment of an order, notwithstanding more than the six months limited by the Order of August 7, 1852, had expired, for the purpose of an appeal to the House of Lords, on payment of the costs of the application, but without any order as to the costs of an appeal to the Lords Justices, which had been dismissed.

THIS was an application under the 3rd Order of August 7, 1852, for leave to enrol the order in this case, notwithstanding more than the six months limited by the 2nd Order had expired, for the purpose of an appeal to the House of Lords. It appeared that the enrolment had not taken place through inadvertence.

Bagshawe in support.

Osborne, contra, on the ground that the application should be made to the Lord Chancellor or Lords Justices under the 6th Order, and that the costs should be first paid of an appeal to the Lords Justices which had been dismissed with costs, but which costs had not been paid and could not be enforced, as the party was resident in Scotland.

The Vice-Chancellor said, that a very strong case must be made out to deprive a party of his right of appeal, and that he had jurisdiction in the matter. The costs of this application must be paid before enrolment, but no order could be made as to the costs of the appeal.

Court of Queen's Bench.

Foster v. Mentor Life Insurance Company.
Nov. 16, 1830; Jan. 30, 1854.

ACTION ON POLICY OF INSURANCE. — ANSWERS TO QUESTIONS AS TO LIFE.

*An insurance was effected on a life in 1845, with the B. office, but on the office resolving in 1851, to limit the amount insured to 3,000*l.*, they had applied to the defendants to undertake the insurance of the surplus, which was agreed to, and the papers signed in 1845 were sent to the defendants, with a memorandum, in reply to the usual questions, referring thereto. It appeared that, although the life was insurable in 1845, it was uninsurable in 1851, under a disease of which the insured died, but both parties were ignorant of this. The plaintiff, as representative of the B. office, obtained a verdict on the policy—the rule to set aside was discharged—the Court being divided in opinion.*

A RULE nisi was granted on November 5 last, to set aside the verdict for the plaintiff and for a new trial in this action by the plaintiff as representative of the Britannia Mutual Life Assurance Company, to recover the sum of 1,500*l.* on a policy upon the life of the late Count D'Orsay, and to which the defend-

ants had pleaded that the plaintiff had previous to the assurance untruly represented that Count D'Orsay was at the time in a good state of health, and was not afflicted with any disease tending to shorten life. On the trial, before Lord Campbell, C.J., at the Sittings in London after Trinity Term last, it appeared that the Britannia Company having resolved to effect no insurance on one life for an amount greater than 3,000*l.* had applied to the defendants to re-insure for the surplus, and on their agreeing to do so, the papers as to the life of Count D'Orsay, originally received in 1845, were forwarded to the defendants, and the answers to their questions were dated on November 21, 1851, and a memorandum was added referring for particulars to copies of the Britannia's papers attached. It appeared, however, that, although when the original policy was effected the life was insurable, at the time of the insurance with the defendants the Count was suffering under a disease which was finally the cause of his death, but this circumstance was unknown to both the contracting parties. The plaintiff had obtained a verdict.

Willes showed cause against the rule; *Attorney-General* and *C. Wood* in support.

Curr. ad. vult.

The Court (per Lord Campbell, C.J., and *Coleridge, J.*,—*dissentientibus Wightman* and *Erle, JJ.*) discharged the rule.

Dancy v. Richardson. Jan. 30, 1854.

LIABILITY OF BOARDING-HOUSE KEEPER FOR LOSS OF LUGGAGE THROUGH SERVANT'S NEGLIGENCE.

A lodger in a boarding-house, being about to leave, had her luggage placed in the passage, and it was stolen through the servant's negligence in leaving the street door open: Quære, whether the keeper of the boarding-house was liable for its loss.

THIS was a rule nisi to enter a nonsuit or for a new trial of this action, which was brought against the keeper of a boarding-house to recover for the loss of a dressing-case, which was stolen from the passage in consequence of the negligence of his servant in leaving the street door open. On the trial, before *Erle, J.*, it appeared that the plaintiff was about to leave, and that the dressing-case had been placed in the passage previous to her starting. The plaintiff obtained a verdict.

Wightman and *Erle, JJ.*, held, that as there was no delivery of the goods to the defendant, nor any contract or reward paid for their safe custody, and they remained in the possession of the owner, the defendant was not liable.

Lord Campbell, C.J., and *Coleridge, J.*, held, that the reception and safe custody of the luggage was part of the contract on receiving the plaintiff into the house, and it was gross negligence in the servant to have left the street door open, and for which the defendant was liable.

The Court being divided in opinion, the rule was therefore discharged.

In re Thomas Pattinson, Gent., one, &c. Jan. 31, 1854.

ATTORNEY.—STRIKING OFF ROLL ON CONVICTION FOR OBTAINING MONEY BY FALSE PRETENCES.

A rule was made absolute to strike an attorney off the roll, who had been convicted of obtaining money under false pretences.

THIS was a rule nisi granted on November 11 last, to strike Thomas Pattinson, of Liverpool, one of the attorneys of this Court, off the Roll, upon his having been duly convicted at the Quarter Sessions holden in and for the borough, on July 25 last, upon an indictment of having on June 6, unlawfully and by false pretences obtained from one James Hankin divers sums of money with intent to defraud, and having been thereupon adjudged and ordered for his said offence to be imprisoned in the house of correction of the borough of Liverpool for the space of six calendar months. The rule had been enlarged on November 24, upon Mr. Pattinson's application, until this Term. The affidavits filed by Mr. Pattinson set out as an excuse for his conduct that he had given way to drink, and stated his intention to proceed immediately and take up his abode in Australia.

Atherton and Milward showed cause; *J. Wilde* for the Incorporated Law Society in support, was not called on.

The Court said, that the rule must be made absolute.

Regina v. Derbyshire, Staffordshire, and Worcester-shire Railway Company. Jan. 31, 1854.

RULE FOR INSPECTION OF REGISTER OF SHAREHOLDERS BY JUDGMENT CREDITOR.—SOLICITOR'S LIEN.

A rule was made absolute on the defendants to permit a judgment creditor to inspect the register of shareholders, under the 7 & 8 Vict. c. 110, although it was suggested the creditor had issued an elegit and had taken land of more than the value of his debt,—the solicitors in whose possession the register was, having waived their lien.

THIS was a rule nisi for a mandamus on the defendants, or their solicitors, to permit Mr. Addison, a judgment creditor for 800*l.*, to inspect the register of shareholders under the 7 & 8 Vict. c. 110. It appeared that the register was in the possession of the defendants' solicitors, who claimed a lien thereon, and that Mr. Addison had issued an elegit, under which the sheriff had taken seven acres of the defendants' land of the yearly value of 10*s.* per acre.

Crowder and Kemplay, for the defendants, showed cause; *Bramwell and Hayes*, in support, were not called on.

Pigott, for the solicitors, consented to abandon their lien on their names being struck out of the rule.

The Court made the rule absolute.

Regina v. Justices of Lancashire. Jan. 31, 1854.

CERTIORARI.—ORDER OF SESSIONS AS TO APPLICATION OF COUNTY RATE.

A rule was made absolute for a certiorari to bring up an order made by the Quarter Sessions, directing the allowance in the treasurer's accounts and payment out of the county rate, of a sum paid for the refreshment of the justices pending an inquiry into the conduct of a County Court Judge.

THIS was a rule nisi, obtained on Nov. 25 last, for a certiorari to bring up an order made by the Lancashire Quarter Sessions on June 30, directing the allowance in the treasurer's accounts, and payment out of the county rate of a sum of 53*l.* odd, for the refreshment of several of the justices who had attended at Preston the recent inquiry into the conduct of Mr. Ramsay. The rule had been obtained on the ground there was no notice of the resolution, which was an amendment on a notice that a rule should be applied for for repayment of the sum in question.

Watson and Kaye showed cause, citing 12 Geo. 2, c. 29, s. 16; Sir F. Thesiger and *Cowling* in support.

The Court made the rule absolute.

Court of Common Pleas.

Mahony v. Kekule. Jan. 14, 1854.

SIGNATURE FOR FOREIGN PRINCIPALS OF CONTRACT.—ACTION FOR WAGES.

The defendant signed on behalf of V. & Co., foreign merchants, an agreement entered into between them in London and the plaintiff for the employment of the latter in France: Held, refusing a rule to set aside the verdict for the defendant, and enter it for the plaintiff, in an action brought to recover wages on the contract, that the defendant was not liable.

THIS was a motion, pursuant to leave reserved, for a rule nisi, to set aside the verdict for the defendant, and enter it for the plaintiff in this action, which was brought to recover the amount of wages due to the plaintiff under a contract in writing, purporting to be between himself and Messrs. Vacher & Co., of Morlaix, France, to serve them from Oct. 1, 1852, to March 31, 1853, in the preparation of provisions. It appeared on the trial before *Cresswell, J.*, at the sittings in London, in Michaelmas Term last, that the contract was signed by the defendant, a provision merchant in London, "for Vacher & Co."

S. Temple, in support, cited *Wilson v. Zu-lueta*, 14 Q. B. 405.

The Court said, that the plaintiff had contracted with the foreign principals, and not with the defendant, who merely signed for and on behalf of them, and the rule must therefore be refused.

Court of Eschequer.

Smith v. Tett. Jan. 16, 1854.

ACTION BY LANDLORD AGAINST TENANT
TO RECOVER POSSESSION OF PREMISES.
—MESNE PROFITS.

Held, that a landlord is entitled to recover mesne profits under the 15 & 16 Vict. c. 76, s. 214, in an action against his tenant to recover possession of premises, although the writ of trial and issue (which were in the form given by the Act) did not contain any claim in respect thereof.

THIS was a motion for a rule nisi for a new trial of this action, which was brought by the landlord against his tenant, to recover possession of certain premises in Great Titchfield Street, and on the trial before Platt, B., the claim for mesne profits was admitted, although the writ of trial and issue (which were in the form given by the 15 & 16 Vict. c. 76) did not contain any claim in respect thereof.

By s. 214 of that Act, it is enacted that "whenever it shall appear on the trial of any ejectment, at the suit of a landlord against a tenant, that such tenant, or his attorney, hath been served with due notice of trial, the Judge before whom such cause shall come on to be tried, shall, whether the defendant shall appear upon such trial or not, permit the claimant on the trial, after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment, to go into evidence of the mesne profits thereof, which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein."

Hawkins in support.

The Court said, that as the section did not impose on the plaintiff the insertion of the claim for mesne profits as a condition precedent to his right to recover the same, the claim must be considered as included in the writ, and the rule must be refused.

Court of Criminal Appeal.

Regina v. Watts. Jan. 21; Feb. 4, 1854.

INDICTMENT FOR STEALING A PIECE OF
PAPER.—UNSTAMPED AGREEMENT.

A prisoner was indicted for stealing a piece of paper, the property of P. It appeared that it was an unstamped agreement, whereby he agreed to build two cottages for the prosecutor: Held, that as the agreement was evidence of the rights of the parties, although it could not be given in evidence as an agreement, it was not the subject of larceny, and the conviction was quashed.

THIS was an indictment for stealing a piece of paper, the property of a Mr. Francis Pattison; and it appeared that it consisted of an unstamped memorandum of agreement, whereby the prisoner agreed to build and complete two cottages for the prosecutor. On the trial at the Yorkshire North Riding Quarter Sessions, the prisoner was committed.

Bliss and Simpson, for the prisoner, contended that as the agreement was a subsisting valid agreement, it was not the subject of larceny at common law as a piece of waste paper. Price, in support of the conviction.

Cur. ad. vult.

The Court (per Lord Campbell, C. J., Alderson, B., Coleridge, Maule, Wightman, and Williams, JJ., Platt, and Martin, BB., Crompton, J., dissentiente Parke, B.), said, that the agreement, although not capable of being given in evidence as such, was available as evidence of the rights of the parties, and it could not be the subject of larceny. The conviction would therefore be quashed.

Regina v. Beaumont. Jan. 21; Feb. 4, 1854.

MASTER AND SERVANT.—EMBEZZLING
MONEYS.—EVIDENCE OF PRIVACY WITH
RAILWAY COMPANY.

On an indictment against the prisoner for embezzling the moneys of his master, it appeared that the master had contracted with a railway company to deliver coals to their customers, and to account for the money by himself or his carmen. It was the custom for the carmen to receive the invoices from the company, and on receiving the money for the coals on delivery, to bring the delivery note to the master to have the cartage entered, and then to pay the money to the company's clerk: Held, that there was such privacy between the company and the prisoner as to render the money their property, and the conviction was quashed.

THIS was an indictment of the prisoner, as servant of Edward Wiggins, for embezzling 5*l.* 10*s.*, the property of his master. It appeared on the trial at the Central Criminal Court, that the prosecutor had contracted to deliver coals for the Great Northern Railway Company to their customers, and to account for the money received by himself, or by his carmen. It was the practice for the invoices to be given to the carmen, who received the money for the coals on delivery, and then went to the prosecutor's office with the delivery note, in order that an account of the cartage might be entered, and afterwards paid the money to the company's clerk. The prisoner had received the sum in question, and had not paid it over.

Dearsley, for the prisoner, contended that the moneys had not been received by the prisoner on account of the prosecutor, but of the railway company; and that there was no embezzlement of his money under the 7 & 8 G. 4, c. 29, s. 47.

Clarkson and Giffard, for the prosecutor, contra.

Cur. ad. vult.

The Court said, that if there was a privacy to be inferred between the company and the prisoner, so as to make him their agent in receiving the money and agreeing to pay it over to them when received, the money would be their property, and not that of the prosecutor, and that as such privacy had been established the conviction must be quashed.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, FEBRUARY 25, 1854.  
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JOINT-STOCK TRUST COMPANIES.

It appears that a deputation from the proposed *Trustee and Executor Society*, consisting, amongst others, of Lord Zetland, Sir John Patteson, and Mr. Headlam, recently attended the Lord Chancellor, and through the medium of Mr. Charles Clark, answered the supposed objections of the Incorporated Law Society to that and similar projects. We apprehend, however, that the deputation did not possess a correct copy of the objections which had been previously submitted to the Lord Chancellor. They somewhat misquoted, we think, the statement of the Law Society relating to the general rule of equity, "that trustees, whether professional men or others, are not allowed to charge for the performance of the duties which they have undertaken, unless they have expressly stipulated for such allowance," and which is so rarely the case that it forms but an exception to the general rule.

It may be true that the Court of Chancery will not refuse to carry into effect a covenant in a deed of trust, or the direction in a will, authorising the trustees or executors to charge in their accounts for their loss of time or trouble in the conduct and management of the trust property. But such covenants and directions must be expressly and clearly made and without any undue influence. In the absence of such express provision, it is the undoubted rule of the Court of Chancery not to make such allowances. It is remarkable that not long ago the Commissioners of Inland Revenue, where the trustee was a solicitor, called on him to pay the legacy duty on the amount of the profit of his bill of costs, which was charged in the executors' account, because the Commissioners deemed it a gift, inasmuch as he could not recover the costs un-

less expressly provided for in the will. The demand for the duty was successfully resisted, but it shows that the Government officers understood the rule of the Court to be opposed to the allowance of anything beyond the actual and proper disbursements of the executor.

Now, if it were true, as alleged, that there is nothing objectionable in enabling a joint-stock company to accept trusts and executorships, in which express provision is made for an adequate remuneration to the directors and their officers, as applicable to *future* trusts, we conceive it is clearly illegal at present for trustees and executors,—having no power to charge a profit for their own skill or labour,—to transfer the trust property to a company empowered to make such charge. And we think the Legislature, when the subject is properly understood, will not alter the law for the sake of any trading company. The Court of Chancery (whose consent is required by the Bill) certainly could not sanction such a breach of trust.

In order to justify the establishment by Act of Parliament of a corporation for such a purpose, it should be shown—1st, that there is an extensive public grievance to be removed, or want to be supplied; and 2nd, that these projected companies possess the best means of supplying the want on reasonable terms.

Now, it may be asked, why should the South Sea Company above all others be selected as the recipient of so great a boon? Why should it be exempted from the ordinary rules of the Court of Chancery? Let it be recollected that this company was established in the year 1710, in pursuance of an Act, for making good deficiencies and satisfying the public debts, and for creating a corporation to carry on a trade to the South Seas, and for the encouragement of

the fishery, and for liberty to trade in unwrought iron with the subjects of Spain. The original object in establishing such company was to enable the Government to carry out certain financial operations, and to raise money at a lower rate of interest than it otherwise could have done; and in consideration of the assistance rendered to the Government in this respect by the persons forming themselves into the South Sea Company, they obtained very extensive privileges, amounting to a monopoly of the trade and fisheries in the South Sea. The privileges so acquired were not effectually or properly carried out by the company, and resulted only in disappointment and the ruin of many persons who had purchased shares upon the faith of the undertaking.

Is it not monstrous that large joint-stock companies should enter into competition in regard to the execution of private and family trusts, with the relatives and friends and professional advisers of the persons to whom the trust property belongs, and obtain a per centage from the widow and orphan, measured, not according to the justice and necessities of the case, but with a view to the declaration of a satisfactory dividend?¹

How men of common sense and respectability can be induced to take shares in such a company, can be paralleled only by the South Sea Bubble itself. What can the shareholder expect to receive for his capital? 1st. There is to be a guarantee fund in the Bank, paying only 2½ or 3 per cent. 2nd. The expenses of the establishment must be paid,—secretary or official manager, clerks, and servants,—rent, taxes, &c. 3rd. The directors must be paid. It is not a charitable institution. The directors are strangers to their *cestui que trusts*. A guinea or two must be paid for the attendance of each member of the Board. 4th. Of course the solicitor must attend and receive his fee, and be paid all his costs. 5th. The standing counsel must be paid. It will not do to run risks. The company must be made secure by the best advice. 6th. There will be no small expense incurred in obtaining the Act, and after it has been obtained, in advertising the great blessing conferred on the community by the inauguration of this executor and trustee, wholesale and retail, cheap and expeditious, joint-stock company.

But, "though last not least in their estimation,"—7th. The shareholders of the South Sea Company, who, instead of receiving from the Chancellor of the Exchequer their stock at *par*, have left it in the Bank at 2½ or 3 per cent., must be paid something in the shape of a decent dividend, or why should they lock up their South Sea Stock, or why in the other company should they advance their hard cash for such a sorry return? What, we may ask, will be the price of the shares on the Stock Exchange of such a speculation!

The origin of the project seems traceable to the fact, that the profitable and easy duty of a South Sea director was about to cease by the payment of the debt due from the Government to the company, and it occurred to the active minds of a few of the directors (who appear to have influenced the others) to continue the "occupation" that would otherwise be "gone," by attaching to the tail of a South Sea Fishery Company the duty of fishing for suits in Chancery,—giving their learned counsel and solicitors the benefit of the contest, and in many cases leaving (it might be hoped) in the hands of the directors the funds in dispute. Nor is it marvellous that such a scheme should be contemplated. The Court of Chancery, as the most efficient trustee of disputed funds, has already accumulated nearly four millions of unclaimed stock or cash, and the South Sea Fishery Company might also expect in due time to catch no small amount in their net. Lords Truro, St. Leonards, and Cranworth, however, have put a stop to these accumulations in future. The South Sea Company is too late in the field. The surplus interest is more than sufficient for the new Courts; but the ingenious South Sea chairman is out in his reckoning with regard to the South Sea fishery in Chancery Lane. The day is gone by. We hold that where private trustees are unable satisfactorily to execute *gratuitously* (as they in general generously do) the duties confided to them, the Court of Chancery, with its greatly improved machinery of action, its summary course of proceeding, and its vastly diminished expense, is and will be the best trustee that the Legislature can provide.

It is urged, that a company exclusively engaged in trust transactions would acquire great facility in the despatch of business, and could manage it at less expense than individual trustees. We doubt this allegation; if there be an extensive business, there must be a large staff to trans-

¹ Not unlike would this be to those who, under the pretence of political advantages, extract "a penny from the poor man and a half-penny from the starving man."

act it. But we question the extent of the business: we believe it will be small in comparison with the cumbrous machinery to execute it.

We venture to say, on the part of the members of the larger branch of the Profession (but in this matter the conveyancing barristers are equally interested), that they are induced to oppose the principle, as well as the details of this measure, not on grounds affecting their own personal interests, but because the measure can do no good, and very probably will do harm to the parties really interested in the property held in trust. We are not, however, inclined to shrink from the consideration of the general interests of the Profession, because it may be supposed that they conflict with the interests of the public. In the present instance we are persuaded that both interests are identical. And when we are considering the *motives* which may influence either the supporters or the opposers of the measure, we venture to say that *self-interest* is palpably more at work in behalf of, than in objection to, the Bill.

In support of joint-stock trusts, we place foremost the standing counsel and solicitors for the company. They are to grasp to themselves the fees, emoluments, and advantages, now more or less dispersed amongst their brethren generally. They will not only secure the direct profits of the legal business arising out of the trust deeds and wills brought into the net of the company, but their barristers and solicitors will be equally placed conveniently in juxtaposition with the parties beneficially interested in the trust funds and property, and they will be enabled to enter into an *unfair* competition with their brethren in the several branches of the Profession to which they belong.

At this time, above all others, when changes are taking place which affect the Profession to an extent never before witnessed, we cannot but express our regret and surprise that solicitors of so much respectability as are the solicitors of the South Sea Company and of the Trustees and Executors' Society, should be engaged in schemes, at best doubtful and speculative, and which, if such projects prosper, cannot but largely interfere with the welfare of the Profession; for if the companies we refer to should succeed in obtaining Acts to incorporate their members, it is clear beyond all doubt that every Session of Parliament will have to pass similar Bills in favour of other companies. The Legislature, if it should unwisely sanction these two projects,

cannot, in common justice, deny the same powers to other Societies,—as, for instance, to all the Law Life and Fire Insurance and other public companies.

What will be the result? We venture to say, that though the South Sea Company and the Trustees and Executors' Society may conduct the affairs entrusted to them with integrity and economy, such projects will multiply, and the occasional instances of breach of trust will multiply with them. Let no such schemes be trusted.

The following are some of the objections, in addition to those we have urged, which appear to us to be well deserving of consideration:—

1. The general rule of equity prevents trustees from receiving remuneration for the performance of their duties, unless specially provided by the deed of trust, and if it be deemed safe or expedient to abrogate this rule, the alteration should be effected as part of a general public measure, applicable to all persons, and after full and mature deliberation, and not by creating an exception for the exclusive benefit of a joint-stock company. If joint-stock companies for the administration of trusts should be deemed beneficial to the public, the plan should be carried into effect by a public Act, of which due notice should be given to enable the public to express their opinion upon the propriety of such a measure; and not by a private Act, the provisions of which are not published with the Parliamentary Papers.

2. Trusts are, in the majority of cases, carried into effect by the trustees personally, and without expense, or with the assistance of their solicitors, acting in cases of difficulty under the advice of counsel. The difficulties arising in the administration of trusts will not be diminished by substituting a company or corporation for individual trustees. Trustees are almost invariably selected in consequence of their connexion with *cestui que trusts*, and their knowledge of the circumstances and condition of the trust property, and are therefore enabled to perform their duties without any formal investigation of facts and circumstances absolutely necessary to enable strangers to carry trusts into effect.

3. In cases where the duties of trustees become difficult or impossible to be performed by the trustees personally, the Court of Chancery, as the tribunal especially established for the administration of trusts, and having full cognisance of the principles which regulate trustees in their duties, is the proper tribunal in which such administration should be conducted. The recent Acts of Parliament relating to trusts and the powers vested in the Court of Chancery for appointing new trustees, and administering trusts in a summary and expeditious manner under the supervision of the Equity

Judges at Chambers, afford sufficient protection, security, and convenience to the suitors, and therefore the powers and authorities proposed to be given to the South Sea Joint-Stock Company and the Executors' Society are unnecessary, either with a view to the interests of *cestui que trusts* or for the public advantage.

4. It is inexpedient to permit a public company to make the administration of trusts a profitable trading speculation. The Bill provides, That the directors may agree with the settlor or other party interested as to the remuneration to be paid for the duties to be performed, and that the company may take for their own use the remuneration so to be fixed. The charges necessarily *must* exceed the fair value of the services rendered, in order to afford a profit to the shareholders on their capital. The trusts, powers, and discretion with which trustees are invested are such as in a great majority of cases could not be advantageously exercised, and in many cases could not be at all exercised by, a public company.

5. Inasmuch as a public company can have no personal acquaintance with the majority of their *cestui que trusts*, or of the condition or circumstances of the trust property, or of the facts on which, independently of the instrument creating the trust, the title of the *cestui que trusts* depends, it would be found necessary, that the company, for the due performance of their duties as trustees, should be furnished with such evidence as would be required by the Court of Chancery in the administration of a trust of a similar nature. The necessity for adducing such evidence would render the administration of trusts by a company liable to all the objections capable of being urged against their administration by the Court of Chancery, without any of the advantages arising from the high character and experience of the Judges and officers of that Court, and its powers of pronouncing authoritative decisions and carrying them into effect.

6. It is highly objectionable that trustees should be enabled to place their trust property under the management of a joint-stock company for their pecuniary profit, and especially to disclose family arrangements to a body of strangers, who cannot be expected to take any interest in, or to have any sympathy with, the parties beneficially interested in the trust.

7. The object is, in effect, to establish a trading in trusts by a joint-stock company for their own profit, without any individual responsibility; and inasmuch as the directors of such a company must act without any sense of personal interest or duty towards their *cestui que trusts*, there will be no check against the temptation to increase, as much as possible, the profits to be derived from such trading, at a corresponding loss to the *cestui que trusts*.

8. The directors of the company will have inconsistent duties to perform:—being, on the one hand, accountable to their shareholders for the most profitable employment of the funds of the company, which is to be obtained only by

increasing the expenses of the management of trust funds committed to their care; whilst, on the other hand, their duty to the *cestui que trusts* will be as much as possible to limit the expenses of management of the trust funds.

The gentlemen representing the Executors and Trustees' Society are very sensitive regarding the description of their project as a *trading* speculation. A Peer of the Realm, a Member of her Majesty's Privy Council (recently one of the most respected Judges of the Superior Courts), and a Queen's Counsel, may naturally dislike to be denominated Traders and Dealers in Trusts; but as shareholders in a joint-stock company, seeking for the profitable investment of capital, and being paid for their services, they may, we conceive, be classed with other companies having in view the like pecuniary advantages and emoluments, in the shape of dividends, fees, and salaries.

On the subject of the profits of the company, its promoters contend that the discharge of the proposed "delicate and difficult" duties may properly be remunerated by a per centage. Of any actual *difficulty* in the duties to be performed by the directors, we venture to doubt. They will personally overcome no difficulties. The duties will be really discharged by paid officers and agents. And with regard to the *delicacy* of their duties, that is precisely the branch of the plan which a general board cannot satisfactorily execute.

It is not supposed, as the deputation conjectured, that the directors will walk about proclaiming the contents of wills, which may be seen at Doctor's Commons for a trifling fee, but we maintain that a numerous and promiscuous body are unfit to deal with "delicate and difficult" affairs. We are aware they may appoint special committees and confidential officers to consider family arrangements affecting the personal welfare, the education, advancement, or marriage of the *cestui que trusts*, or the investigation of partnership embarrassments; but these committees and agents must report to the board, and matters of the greatest "delicacy" may thus be disclosed to a dozen or more directors connected with various classes of the community, and it is well known that interesting cases are apt to form the subjects of conversation out of the board-room, as sometimes even Cabinet secrets are partially hinted at or disclosed.

On the whole, the scheme is uncalled for by any pressing grievance requiring the aid of Parliament; and will, for the most part, be mischievous and expensive.

ANNUAL CERTIFICATE TAX.

It will have been observed in the report of the debates, that Lord Robert Grosvenor intimated to the House of Commons on Thursday, the 16th instant, that the application to Parliament for the repeal of the remaining Certificate Tax, will not be renewed this Session. The remarks of the noble Lord were not distinctly heard, for the House lent an unwilling ear,—perhaps apprehending that the agitation of the subject was about to re-commence. Although not reported, it was stated by his Lordship, that the Profession did not consider the adverse division on the second reading of the Bill last year, to be the fair exponent of the judgment of the House of Commons upon the question.

The Government being opposed to any further remission of the tax, in the present state of public affairs,—a war being now inevitable, and large demands necessarily made on the public purse,—it was manifestly right to postpone the motion. When again blessed with peace, the Government (whoever may be in power) will have to re-consider this objectionable species of taxation, vicious as it unquestionably is in principle and unequal and oppressive in practice. We may then expect that justice will be done, either by the total repeal of the tax, or by a general measure of registration for all professional classes. We observe that the medical profession has become convinced of the necessity of a proper registration of all practitioners. A small annual payment, if spread over the whole community, would produce the sum required.

It was manifest from the impatient manner in which the House received the slightest mention of the subject, that there would have been no chance of any extent of success. The unpopularity of the Profession would have been increased if the appeal had been pressed forward, and great danger incurred of creating a prejudice against further relief at a future time. We reluctantly bend to the unfavourable obstruction which has barred, for the present, the further progress of the measure: we must "bide our time."

NOTES ON RECENT STATUTES.

LAW OF EVIDENCE ACT AMENDMENT, 1851.
—INSPECTION OF DOCUMENTS.—PARTICULARS OF LIEN.

To an action to recover from the defendant

a mortgage deed between Richard Parker and the plaintiff, the defendant pleaded a general lien for work done by him as attorney for the plaintiff. A rule was thereupon obtained under the 14 & 15 Vict. c. 99, s. 6, for an inspection of the defendant's books in order to take copies of such parts for the period covered by the bill of costs, which was incurred in an action by Mr. Parker against the Great Western Railway Company and on a reference of such action, and which had been delivered under a Judge's order, as related to the lien.

Lord Campbell, C. J., said,—“We cannot make the rule absolute in its terms: these are too general. Whatever is in the nature of a fishing application is to be resisted. But we ought to grant one part of the application. I think, as I threw out in the course of the argument, that where the defendant is in possession of documents which make out, not his own case, but either the case of the plaintiff or the plaintiff's answer to the defendant's case, the plaintiff is entitled to inspection. He is not entitled to inspect that which merely makes out the defendant's case, any more than the defendant is entitled to inspect documents of the plaintiff which merely make out the plaintiff's case. As far as this application relates to the inspection of that which contains the particulars of the lien, it may be granted. The affidavit of the plaintiff is not very specific, in merely stating that the bill of costs has been made out from the books; but we must infer that they are believed to contain the entries from which such bill has been made out. These could not be evidence for the defendant; but they may furnish material evidence for the plaintiff. Had this, as we might perhaps have presumed from the beginning of the affidavit; been a mere fishing application, it could not have been sustained. But where reasonable ground is furnished for believing that what the inquiry seeks is, not the nature of the defendant's case, but the evidence material for the plaintiff's case, the inspection may be granted. The rule must therefore be modified, and strictly confined to entries in the books respecting the particulars of the lien in respect of the action between Parker and the Great Western Railway Company, and the reference.”
Scott v. Walker, 2 E. & B. 555.

NOTICES OF NEW BOOKS.

A Manual of Equity Jurisprudence, founded on Story's Commentaries and Spence's Equitable Jurisdiction, and comprising in a small compass the Points of Equity usually occurring in Chancery and Conveyancing, and in the General Practice of a Solicitor. By JOSIAH W. SMITH, B.C.L., of Lincoln's Inn, Barrister-at-Law. Third Edition. London: Stevens & Norton. 1854. Pp. xiv, 417.

THE Author of this useful manual for solicitors and students is already well known to the legal public as the Author of a *Treatise on Executory Contracts*, and as the Editor of Lord Redesdale's *Treatise on Pleadings* and Fearn's *Contingent Remainders*. Mr. Smith, after ably and concisely stating in his introduction the nature of Equity; the extent of the jurisdiction of the Court; and enumerating the general maxims of Equity Jurisprudence, proceeds to divide the subject into the following heads:—1. Of remedial Equity, specifically so termed; 2. Of executive Equity; 3. Of adjustive Equity; 3. Of protective Equity, irrespective of disability; 5. Of protective Equity, in favour of persons under disability; 6. Of auxiliary Equity. These subjects are then severally treated of under the following subdivisions:—

1. *Remedial Equity*—Accident, mistake, actual fraud, constructive fraud.

2. *Executive Equity*—Legacies and portions, donations mortis causa; express private trusts evidenced by some written document; express charitable trusts; implied trusts; constructive trusts; trustees and others standing in a fiduciary relation; specific performance of agreements and duties not arising from trusts.

3. *Adjustive Equity*—Account in general; administration; mortgages and pledges; apportionment and contribution; partnership; certain special adjustments in cases of debtor and creditor; certain miscellaneous cases of account; damages and compensation; election; satisfaction; partition; settlement of boundaries; assignment of dower.

4. *Protective Equity*—From litigation or injury, afforded by the cancelling, delivering up, and securing of documents; and respecting the property of another, by means of interpleader; from repeated or renewed litigation, or from unjust legal proceedings, afforded by decrees upon bills of peace or bills to establish wills, and by injunctions; from loss or injury, in other cases, by injunction; from another's abscondment, by

the writ of ne exeat regno; and protection by the writ of supplicavit; protection of property, by taking away the possession or receipt thereof, or by requiring security.

5. *Protective Equity*—Infants; persons of unsound minds; married women.

6. *Auxiliary Equity*—Discovery, and taking and preserving of testimony, in aid of suit or defence in another Court.

NEW BILLS IN PARLIAMENT.

APPOINTMENT OF PUBLIC PROSECUTORS.

THIS Bill, after reciting that the appointment of public prosecutors for the purpose of conducting the prosecution of criminal offenders would conduce to the efficient administration of justice, proposes to enact as follow:—

'The Circuits now travelled by the Judges of Assize are to be divided into such districts as to her Majesty, with the advice of her Privy Council, may seem necessary' (s. 1).

The Lord Chancellor shall appoint for each district one or more fit persons, each being a barrister-at-law of not less than 10 years' standing (s. 2), to be styled "the public prosecutor," and paid out of the consolidated fund not exceeding 1,500*l.* per annum, including travelling expenses, to be removable only for misconduct or unfitness after examination and inquiry to the Lord Chancellor and Lord Chief Justice of the Queen's Bench (s. 3).

The duties of the public prosecutors before and at the trial (ss. 4, 5).

Whenever for any cause it is desirable to provide additional assistance, the district agent, on obtaining the Judge's certificate, may nominate deputy public prosecutors (s. 6), to be barristers of not less than three years' standing, to be paid not exceeding 10 guineas per whole day, such appointment not to be for longer than one whole day (s. 7).

Four barristers of not less than five years' standing for Middlesex and Westminster, and one for every other county or sessional division in England, and one for two counties in Wales, and one for every such borough or district as ordered by her Majesty and Privy Council, shall be appointed "the assistant public prosecutors," to be paid not exceeding 300*l.* a year out of the consolidated fund, including travelling expenses, to be removable as under s. 3, but not to be a revising barrister, one of her Majesty's counsel, nor hold any other place or office whatsoever under the Crown, within the county, borough, or district for which appointed (s. 8).

Four barristers attending sessions to be chosen in rotation as deputy assistant public prosecutors for ensuing year, one at each session, to be paid not exceeding five guineas a day (s. 9).

The Lord Chancellor may appoint one or more attorneys-at-law of not less than seven years' standing as district agent to act as attor-

ney for prosecution, to be removable at the pleasure of the Crown, and be paid a yearly salary out of the consolidated fund (s. 10); and to perform certain duties as such attorney for the prosecution (s. 11).

The Secretary of State to make rules for the guidance of district agents (s. 12); policemen and constables to give information to district agent (s. 13); duty of district agents on receiving information (s. 14); magistrate may give notice to district agent to attend examination of accused person (s. 15).

No person shall be prosecuted for giving to his master's horses a larger quantity of corn than the master has allowed to be given, but the magistrate for the district may, within one week after the offence committed, by his written order deduct from his wages not exceeding 30s., without any costs of application (s. 16).

Justices of the peace and police magistrates may remand the accused, in order to take the opinion of the public prosecutor, but no costs to be allowed if the committal be contrary to his advice, unless the Judge, Chairman of Quarter Sessions, or Recorder shall certify (s. 17); but parties may, as heretofore, present bills before grand juries at their own costs and charges; and this Act shall not extend to prosecutions by order of the Attorney-General, for common assaults, libels, nuisances, or stopping up or non-repair of roads, for libel or defamation, or to indictments removed by *certiorari* (s. 18).

Subpoenas may be issued *gratis* to compel the attendance of prisoner's witnesses, and the costs shall be allowed on certificate of the Court or Judge that such witness, not being a witness of character only, was a material witness (s. 19).

POINTS IN EQUITY PRACTICE.

EXAMINATION OF PLAINTIFF VIVA VOCE BEFORE EXAMINER.

The plaintiff supported a state of facts and charges, carried in before the Master, by his affidavit under an arrangement that he should attend and be cross-examined *viva voce* before the Master, but on his attending accordingly, the Master declined to proceed in the absence of a shorthand writer, but gave the defendant leave to exhibit interrogatories on or before the last day of Michaelmas Term, 1852. The Acts 15 & 16 Vict. cc. 80, 86, in the meanwhile came into operation.

The Vice-Chancellor *Stuart* said, that there must be a supplemental order for the examination of all parties on interrogatories before the Examiner as the Master should direct, and gave the defendant liberty to cross-examine the plaintiff *viva voce* before an examiner. *Hestall v. Cheatle*, 1 Smale & Giffard, 78.

MOTION FOR INJUNCTION.—FURTHER TIME TO DEFENDANT TO ANSWER AFFIDAVITS.

In a suit for the dissolution of an alleged partnership between the plaintiff and the defendant, the Vice-Chancellor *Wood* granted an application by the defendant for time within which to answer the affidavits, filed by the plaintiff in support of a motion for an injunction, but directed the affidavits to be filed within two days, and made an order for an interim injunction until the next seal. *Besmeres v. Besmeres*, 1 Kay, xvii.

JURISDICTION OF COUNTY COURTS.

PLAINT FOR LEGACY.—TAKING OUT LETTERS OF ADMINISTRATION.—CAUSE OF ACTION.

A TESTATOR, by his will, made at Margate, bequeathed *inter alia* a sum of 20*l.*, should his executors think proper, to the plaintiff, his man-servant, conditional on his continuing to conduct himself faithfully in all respects. The executors, whom he had thereby appointed, renounced, and administration was granted with the will annexed, in the Prerogative Court of Canterbury, to the defendant, who resided in London. This plaint was brought by leave of the Judge of the Kent County Court to recover the legacy, and an order had been granted by *Crompton, J.*, for a prohibition against further proceeding therein.

A rule to set aside this prohibition was discharged, on the ground that the grant of the letters of administration was an essential part of the cause of action: *Murray v. East India Company*, 5 B. & Ald. 204; and that it was not therefore made out that the cause of action arose within the district, and the Judge had no jurisdiction under the 9 & 10 Vict. c. 95, s. 60. *In re Fuller v. Mackay*, 2 E. & B. 573.

A plaint was brought in the Middlesex County Court at Brompton, to recover possession of land let by the plaintiff to the defendant for a term which had not expired, and it appeared the original rent was under 50*l.*, and that there had been no fine, but that the present annual value of the premises was above 50*l.*

On discharging a rule *nisi* for a prohibition, held (per Lord *Campbell*, C. J., and *Erle*, J.), that the County Court had jurisdiction under the 9 & 10 Vict. c. 95, s. 122, if either the value or the rent did not exceed 50*l.* by the year, citing *Fearon v. Norvall*, 5 D. & L. 445; and per *Crompton, J.* that such indication

only existed where *neither* the value nor the rent exceeded that amount, referring to *Crowley v. Fitty*, 7 Exch. R. 319. *In re Earl of Harrington v. Ramsay*, 2 E. & B. 669.

OBJECTS AND ADVANTAGES OF THE INCORPORATED LAW SOCIETY.

THIS Society was established, under a deed of settlement, in 1827, incorporated by charter in 1831, and commenced its operations in 1832. In 1833 it instituted several courses of lectures; in 1836 it was empowered to examine all applicants for admission on the Roll; in 1843 was appointed Registrar of Attorneys, and in 1845 obtained a second charter containing extended declaratory powers.

As a legally recognised body of practitioners, the Council of the Society have co-operated in promoting measures calculated to afford facilities for professional education and practice, for the remedy of abuses, and for sustaining the just claims of their branch of the Profession to the respect and confidence of the community at large. In furtherance of these objects, and for conducting the general business of the Society, the Council and their different Committees hold regular meetings every week.

They examine all Bills before Parliament relating to the Law, and state to the proper authorities such objections as occur to the Council to the proposed enactments, and suggest such additions and alterations therein as appear to be expedient for improving and perfecting them. In these and the like instances they take such measures as seem best calculated to promote the welfare and respectability of the Profession.

The new Rules and Orders from time to time issued by the several Courts of Law and Equity are printed at the expense of the Society and forwarded to the members; and other important professional information is communicated in the Annual and Special Reports of the Council.

On their opinion being required as to any doubtful or disputed professional usage, particularly in conveyancing practice, the Council carefully consider the matter, and register their decisions in a book kept for that purpose, which is accessible to the members of the Society.

Lists of persons applying to be admitted and re-admitted on the Roll of Attorneys and Solicitors, or to renew their certificates,

are printed and circulated in order that improper persons may be opposed. Where there is sufficient ground, the Council undertake, on behalf the Society, to apply to the Courts to remove persons from the Rolls who have misconducted themselves as attorneys, and in other respects aid in the supervision of professional practice.

The Society already comprises a great proportion of the most respectable practitioners in town, and a considerable number practising in the country; and the Council are desirous of calling the attention of their professional brethren to the advantages afforded by the establishment.

With a view to extend the usefulness of the Society, and bring together a larger proportion of the members of the Profession, particularly the junior practitioners, the *Admission Fee* has been reduced to 5*l*.

In order to be admitted into the Society, the applicant must be proposed by two members, his name affixed in the Hall for 14 days, and approved on ballot by the Council. The annual subscription for town members is 2*l*., and for country members 1*l*.

Every member, immediately on his admission, becomes entitled to the benefits of the Institution, comprising the following departments:—

1. *The Hall*, open daily from 9 o'clock in the morning till 10 at night, is furnished with the votes and proceedings of both Houses of Parliament, the London Gazette, morning and evening newspapers, reviews, and other useful periodical publications. Here also members of the Profession, residing in different parts of the town or country, are enabled to meet one another by appointment, and for all purposes of business.

2. *The Library* is open daily from 9 o'clock in the morning until 10 at night, except on Saturdays, when it is closed at 4. It comprises nearly 11,000 volumes, and is divided into two parts; an Inner Library, for the exclusive use of members, containing Parliamentary works, and public records, county history and topography, genealogy, heraldry, and miscellaneous works; an Outer or Law Library, comprising the statutes, reports, digests, treatises, and other works relating to the Law, which is open to students as well as members. In case any scarce book in the Library should be wanted by a member for production in any of the Courts of London or Westminster, the librarian, or a messenger, will attend with it under the authority of the President, or Vice-President, or two members of the Council.

The Articled Clerks of members are admitted to the Law Library on payment of an annual subscription of 1*l*.

NEW LAW COURT.

To the Editor of the Legal Observer

SIR,—Allow me space for a remembrance on your kind notice of my pamphlet.

I do not question the ingenuity of the plan. We have seen Sir John Soane stick Justice between the buttresses of West Hall, and no doubt the Strand Court be so imbedded in the building as to be vious, as you say, to the noise of street and might be lighted from above. But non-natural constraint of this kind forfeit best arrangement, in other respects, and the plan into confusion. You would fence Courts with the rooms appurtenant to them, but can Judge's rooms (in which often private hearings), consultation rooms, a libraries dispense with quietude? And again the floor below, exposed to the streets on three sides, will contain Registrars and Masters rooms, which contests on minutes and references render a species of minor Court, and do these not need quiet? Besides, these lower rooms ought to be so constructed as to be convertible into Courts should more be hereafter needed, and then you will admit the necessity of quietude.

You mistake the suggestion as to a raised corridor or cloister. It would be carried from the Temple by bridges over the two great thoroughfares of the Strand and Carey Street, and would have its descent into the New Square, Lincoln's Inn, through the first floor of one of the houses. Such a cloistered viaduct would greatly facilitate the communication between the Inns of Court and the Temple, and, except 200 yards of corridor, the Templars (besides the general convenience) would be equal to New Square in reference to the Courts in Lincoln's Inn Fields.

Those who, like myself, can remember when there was not in London a single omnibus or public cab, there being now 3,000 of the one, and, I believe, 15,000 of the other, must look forward to the great thoroughfares which would environ the Strand site, as likely hereafter to form a real impediment to the business of the Courts and offices.

AN OLD LAW REFORMER.

[On the objection to the noise of the Strand site, see p. 318, *post*.—ED.]

3. Lectures on the different branches of the Law are regularly delivered in the Hall from Nov. to March inclusive, and are particularly useful, in consequence of the various and extensive alterations, both in the principles and practice of the Law which have already taken place, and are still in progress. The members of the Society are entitled to attend these lectures gratis; and their *Articled Clerks* are admitted on payment of 1*l.* for each set of lectures, or 2*l.* for the whole. The articled clerks of gentlemen not members pay 1*l.* 10*s.* for each set, or 3*l.* for the whole; and other students, not falling within either of those classes, are admitted on paying 2*l.* for each set, or 4*l.* for the whole.

4. The Registry Office, for the use of members and their clerks, is open daily from 9 in the morning until 8 at night. Here are kept an account of appeals in the House of Lords, the general and daily cause papers, lists of petitions in causes in the Courts of Equity, and in Lunacy and Bankruptcy, the sittings papers, peremptory papers, special papers, and papers of new trials in the Courts of Law.

Boxes are provided in the anteroom for members, in which they may deposit their papers, thus saving the trouble and expense of carrying them to and from the Courts and offices. Books are also kept for entering particulars of property to be sold or purchased; of money to be lent, or wanted to be borrowed on mortgage or otherwise; of applications for partners, and for articled, managing, and other clerks.

5. Rooms for Meetings of Arbitrators, or any other professional matter.

6. Fire-proof Rooms and Closets are provided for the deposit of deeds, &c., in separate boxes; and rooms are let, either for temporary or permanent purposes, each renter having a private key of his own room or closet, to which no other person has access.

7. The Club consists of members of the Society who pay an entrance fee of 5*l.* 5*s.*, and an annual subscription of 5*l.* 5*s.* for town members, and 3*l.* 3*s.* for country members.

SOMERSETSHIRE COUNTY COURT.

By an Order in Council, dated 18th February, 1854, it was ordered, that from and after the 1st day of March, 1854, the County Court now holden by the name of "The County Court of Somersetshire, holden at Clutton," shall be holden by the name of "The County Court of Somersetshire, holden at Temple Cloud," and the said Court now holden at Clutton shall be holden at Temple Cloud instead of at Clutton.—From the *London Gazette*, of the 21st February.

THE LAW RELATING TO INFANTS.

WHAT ARE NECESSARIES?

To the Editor of the Legal Observer.

SIR,—Can any of your readers answer this question,—What things are not “necessaries” for which infants may not contract?

It is surely time that some legal interpretation be given to the word “necessaries;” at present, the interpretation to the word is decided by juries, and their decisions hereupon are of so extended a nature that the enactment against the invalidity of contracts by infants is quite a dead letter, and parents are liable to be ruined by the extravagance of their children.

It has lately been decided by a jury, that jewels and a masonic star which were purchased by an infant at the University for the purpose of decking itself for a ball are necessaries for which the parent is compelled to pay: it has lately been decided that no end of tailors’ bills—no end of clothes, are to be discharged by the parent because these clothes are interpreted by a jury to be necessaries.

Tradesmen trust infants to almost any amount, and trust to a jury finding the articles to be necessaries. The minor may have plenty of clothes of all sorts already provided for him by his father, who has judged what things are necessary and proper for his son to have; but the infant thinks otherwise, and he goes to a tailor and jeweller, or often to several, and these also judge otherwise, and permit him therefore to incur large accounts for clothes, trinkets, &c.; the infant is unable to pay, and the bills are forwarded to the father; he demurs to the payment;—“*Costs are necessaries*,” say the tailors; “But my son did not require them, therefore they are not necessaries for him,” replies the father; an action is brought, and though it be shown that the infant was amply provided for, and that consequently the articles could not be necessaries for him, the jury, on the ground that the articles are necessaries (primarily), find a verdict for the plaintiff, and the father is possibly half ruined or compelled to economise for years.

Surely, something should be done to put a stop to these things. Is the father, or are tradesmen, the more likely to be the better judges of what things are necessary for the minor?

The imposition thus practised by tradesmen upon parents (chiefly by tradesmen of the Universities) might be prevented by an enactment that no contracts *whatever* incurred by minors shall be binding. Would tradesmen, in that case, be so compassionate as to conclude that an infant is insufficiently provided with necessaries, and to trust him, risking payment?

L. O.

SELECTIONS FROM CORRESPONDENCE.

THE PROPOSED NEW COURTS.

I OBSERVE that much is said in the pamphlet to which you referred last week, regarding the *quietude* essential for the New Courts. With this view I have been considering the state of several of our professional and public institutions in different parts of the metropolis.

In the Hall of the Incorporated Law Society where the Lectures are delivered, between which and Chancery Lane the distance is but a few yards, nothing is heard of the incessant passage of omnibuses. In the Library in front of the building, immediately adjoining the street, by the use of plate glass and double sashes, only an apparently distant rumbling is heard, which is rather agreeable than otherwise to the readers and students, in the Library. The secretary’s and clerks’ offices also immediately adjoin the busy lane; but we believe they are quite unconscious of any noise whatever, although they are not protected from the supposed annoyance of the unceasing traffic within a few feet of their auditory nerves.

Consider, again, the position of the Bank of England, the India House, the Mansion House,—or St. Paul’s Cathedral, or many of the city churches,—are the sacred or secular duties performed therein really interrupted by the busy hum of passengers or carriages?

I apprehend the opposition is reduced to the simple point of personal interest. Will the rent of Chambers in Lincoln’s Inn Fields be increased or diminished by the Courts being built up the midst of the garden, or midway between Lincoln’s Inn and the Temple? I am for the Strand site, and so are 99 out of every 100 persons I have met with.

COSTS OF DISTRESS FOR RENT.

SIR,—Your correspondent “Civis” (p. 197, ante), I think, may take it for granted, although I cannot recollect a case in point, that if it has been usual to pay the rent quarterly, in the absence of any definite time given and agreed upon between the lessor and lessee, the nonpayment hereafter of the rent at the quarter will give a right to the lessor to distrain; for it is the peculiar province of the lessee to guard himself, by proper provisions, from all contingencies affecting his lease, and if he neglects to do so it is his own fault. As regards the time for taking a distress, *Pater*, in his Book of Landlord and Tenant, says, “A distress for rent cannot be made the *same day* on which the rent becomes due,” for the reason that “it is not due till the last minute of the day: *Duppa v. Mayo*, 1 Saund. 287. The landlord, however, may distrain for his rent any day subsequent to the day upon which it is reserved, save and except the Sabbath-day.” It would seem from this, that a distress made on the second day after the rent became due, though a harassing proceeding, would be

perfectly legal, neither could the tenant's opposition to it avail anything. It is the usual custom, however, to place a clause in the lease protecting the tenant, in case of involuntary default, for 21 days, from the landlord's remedy. The costs and charges for distresses exceeding 20*l.* are not specified by Act of Parliament, but it seems to be customary to charge 5*l.* per cent. for the levy; and if the broker can produce evidence that it is the charge usually made by neighbouring brokers, and that it is not an unreasonable charge, I feel confident that no action could be maintained against him with success.

ALIIQUI.

SCOTCH LAW OF MARRIAGE AND DIVORCE.

In the Number of February 18, a letter from "Civis" represents it to be Scotch Law, that the father of an illegitimate child, born before his marriage, may, after the dissolution of that marriage by his wife's death, cut off his legitimate offspring from the succession through him to real estate, by espousing the mother of the previously born illegitimate child. Your correspondant is evidently ill-informed upon the nature of the *legitimatū per subsequens matrimonium* of Roman and Scottish jurisprudence, and without discussing the matter, it is enough, therefore, to state, that the Law of Scotland is not at all as it is represented to be.

A SCOTCH ADVOCATE.

ATTORNEYS TO BE ADMITTED.

Easter Term, 1854.

Queen's Bench.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Aldham, Robert Huxley, 14, Myddleton-square;
King's Lynn
Allen, Jas., jun., 88, Queen-street, Cheapside;
Croydon
Arnall, Joseph, 7, Goulston-ter., Barnsbury-road;
Grantham
Beckhouse, Thomas James, Blackburn
Bartleet, William Smith, Stourbridge
Beale, Samuel, 58, Argyle-street, Argyle-square,
King's-square; Worcester
Bisdee, Thomas Denning, 18, Guildford-street,
Russell-square; Weston-super-Mare
Blagg, Charles John, 4, Stanhope-street, Regent's-
park; Newark
Bleek, William Goodman, 58, Liverpool-street,
King's-Cross
Bradshaw, Richard, Upper Hemerton
Bresley, Albert, Higate
Callaway, John, jun., Canterbury
Cartwright, Fred., Hy., 13, Swinton-street, Gray's-
inn-road; Bawtry
Chapman, Geo., 40, Acre-lane, St. John's-wood
Collinson, J. W. Sowden, Doncaster
Cooke, Cass. Jas., 18, Rutland-st., Hampstead rd.
Cola, Hy., South Brent; St. John's-place, Gloucester-
street, Swinton-street, Percy-circus
Coulcher, Cooper, 31, Swinton-street, Gray's-inn-
lane; Albert-terrace
Crawford, William Henry, 11, Weymouth-street;
New Bank-buildings
Creery, Leslie, 36, Sidmouth-st., Regent-square;
Ashford
Crowther, Wm. Alfred, Esher; Shenstone; The
Hoo, near Kidderminster; Godliman-street
Dalton, Thomas Masters, Cardiff
Davis, Frederick John, Tygwyn, Pembrokeshire
Dodd, John Thos., 21, Ladbroke-sq., Notting-hill
Dunn, William, Frome
Dymond, Edward Ernest, 14, Belgrave-street,
Argyle-square; Exeter
Dysart, William Hobson, 17, Great Coram-street;
Mile-end-hall, Stockport
Earle, A. Percy, M. A., 2, Oval-road, Kennington;
Manchester
Faber, Henry Grey, 26, Devonshire-st., Queen's-
square; Gainsborough

R. B. Aldham, King's Lynn
H. Nicol, Queen-street
H. Thompson, Grantham
R. Beckhouse, Blackburn
Vernon and Minshall, Bromsgrove
J. Seallard, Worcester
H. Davies, Weston-super-Mare
R. Griffin, Newark
W. B. Cooper, Verulam Buildings
W. H. Pileher, New Broad-street
E. T. Whitaker, Lincoln's-inn-fields
G. Furley, Caisterbury
F. H. Cartwright, Bawtry
J. T. Pocock, Lincoln's-inn-fields
J. Collinson, Doncaster
J. Lovegrove, Gloucester; Charles Bell, 36, Bedford-row
W. Lambert, Exeter
W. Coulcher (dec.), Downham-Market; G. Platten
(dec.), Lynn; F. R. Partridge, Lynn
H. R. Freshfield, Bank-buildings
R. Furley, Ashford
F. Farrar, Godliman-street
T. Dalton, Cardiff
T. Morgan, Cardigan
R. J. P. Broughton, Great Marlborough-street
E. T. Whitaker, Lincoln's-inn-fields
J. Gidley, Exeter
J. Vaughan, Stockport.
N. Earle, Manchester
T. H. Faber, Stockton-on-Tees; T. T. Trevor,
Gainsborough

*Clerks' Names and Residences.**To whom Articled, Assigned &c.*

Footner, George Maughan, 107, Stanhope-street, Hampstead-road; Essex-street; Romsey	G. B. Footner, Romsey
Fry, Lewis, 6, Great Coram-st., Russell-sq.; Bristol	J. Livett, Bristol
Gaskell, Sl. 35, Islington-terr., Park-road; Wigan	R. Leigh, Wigan
Glubb, William Frederick, 41, Woburn-place, Russell-square; Great Torrington	W. G. Glubb, and P. B. Glubb, Great Torrington
Gough, Clement Forster, Sidmouth-st., Gray's-inn-rd.	J. Forster, Wolverhampton; E. H. Richards, Lin- coln's-inn-fields
Gould, Thomas, Uttoxeter	E. J. Blair, Uttoxeter
Gratton, Richard Thomas, 4, Acton-street, Gray's- inn-road; Chesterfield	J. Cutts, Chesterfield
Green, James, jun., 1, James-place, Gloucester- terrace; Bradford	J. A. Busfield, Bradford, Yorkshire
Greenway, John, 12, Noel-st., Islington; Argyle- square; Plymouth	W. Lavers, jun., Plymouth
Haines, John, 16, Great Marlborough-street; Wil- lesden Green; Kilburn	S. Haines, Lincoln's-inn-fields
Hickman, William, Southampton	C. Davies, Southampton
Hillman, Robert William, 2, Raymond-buildings; Guildford-street; Lyme Regis	R. Hillman, Lyme Regis
Hinde, Charles Heaton, Bolton-le-Moors, South- port; Manchester	J. Thompson, Sheffield; J. Watkins, Bolton-le-Moors
Holmer, William Edward, 30, Upper Rosoman-st., New River Head	G. Holmer, Bridge-street, Southwark
Hopkins, John, 22, Montpelier-square, Brompton	E. E. Whitaker, Lincoln's-inn-fields
Hopkinson, Joseph, 7, Goulden-terr., Barnsbury- road; Nottingham	R. Dafty, Nottingham; C. Butlin, Nottingham
Howell, Edw. Joseph, 4, Larkhall-rise, Clapham; Bedford-row; Guildford	F. A. Curtis, Guildford
Hunt, Thomas, 4, Holford-street, Pantonville; Stratford-on-Avon	W. O. Hunt, Stratford-on-Avon
Jaquet, George Robert, 2, Milbrook-place, Cam- den-town; Clare-court	T. Moseley (dec.), and W. M. Tayler, Bedford- street, Covent Garden
Jeffery, John Rush, 30, Bucklersbury; King's Lynn	E. L. Swatman, King's Lynn
Johnson, Samuel George, 10, Skidmore-st., Ban- croft-place; Bearsted	K. King, Maidstone
Jones, Henry, Colchester	F. G. Abell, Colchester
Jones, Samuel, 190, Sloane-street; Shrewsbury	J. H. Edwards, Shrewsbury
Kell, Thos. Edw., 17, River-st., Pantonville; Leeds	G. B. Nelson, Leeds
Kelly, Charles Frewen, M. A., 21, Great George- street, Westminster	J. P. Fearon, Great George-street
Lambert, Hy. Wm., Little Ryder-st.; Beverley	H. J. Shepherd, Beverley; G. Shepherd, Beverley
Lander, William May, 1, Wellington-place, Ken- sington-rd.; Upper Islington-terrace; Clapham	A. Goddard, King-street, Cheapside
Leathes, Charles Edmund Stanger, 5, New Inn; Croydon; Lothbury	S. Cotton, Lothbury
Lyne, Frederick Lewis, 17, Robert-terr., Chelsea; Wigan	E. Lyne, Liskeard; M. Tatham, Lincoln's-inn-fields
Marshall, Thomas, 3, Regent-square; Canterbury	G. Furley, Canterbury; S. C. Venour, Gray's-inn-sq.
Marshall, Wm., 27, Alfred-st., Islington; Durham	J. E. Marshall, Durham
Mitchell, Wm. Wagner, 27, Thavies-inn; Cardigan	T. George, Cardigan
Morris, Thomas Porter, 2, St. James'-villas, Hol- loway; Warwick; Sherwood	T. Morris, Warwick; J. Fortescue, Banbury
Moordaff, William, Whitehaven	R. Armitstead, Whitehaven
Murton, Alfred Charles, 27, Liverpool-street, King's-cross; Thornhill-place; Braintree	A. C. Veley, Braintree
Oliver, George James, 13, Lawrence-lane, Cheap- side; Grove-terrace	H. Lloyd, Milk-street, Cheapside
Palmer, Giles Charles, Grantham	W. Ostler, Grantham
Peek, Richard, Balham	P. O. Jervis, Uttoxeter; H. Moore, Wimbourne Minster; J. Bishop, New Bridge-street
Pollard, John Metcalfe, Kirby Lonsdale	W. R. Gregg, Kirby Lonsdale
Rackham, Matthew Robert, Norwich	R. Wortley, Norwich
Rammell, Harby, 1, Hereford-sq., Old Brompton	J. S. Burn, Coptball-court
Rhodes, Arthur, Muswell-hill	H. Masterman, Bucklersbury
Robinson, Arthur Ingram, 8, Duke-street, Port- land-place; Clitheroe-castle, Blackburn	D. Robinson, Blackburn
Robson, Edward, 25, Brompton-square	W. F. Robson, Brompton-square
Rowland, Richard, 16, Golden-sq., Regent-street; Cannon-street	C. Robson, Clifford's-inn; C. H. Edmonds, Can- non-street
Rudyard, Frederick Colville, Macclesfield	T. Parrott, Macclesfield
Sheppard, Charles Ed., Milman-st., Mornington- crescent; Devonshire-street; Adelaide-road	C. A. Helm, Worcester; E. W. Field, Bedford-row

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Smith, Wm. Sidney, 7, Gloucester-sq., Hyde-park	A. W. Grant, and P. A. Grant, King's-road, Bedford-row
Sturt, William, Clapham	W. C. Sole, Aldermanbury
Taylor, Albion, Clapham-common	E. E. Tustin, New Bridge-street
Thomas, Isaac, Wigan	J. Mayhew, Wigan; R. Darlington, Wigan; T. F. Taylor, Wigan.
Thompson, Charles Robert, 118, Great Russell-street, Bloomsbury; Whitehaven	W. Perry, Whitehaven; W. H. Ashurst, Old Jewry
Thorn, Henry, 2, Fulham-place, Maida-hill, West; Gibson-square; Liverpool-street	B. Fry, Cheddar; E. Bromley, Gray's-inn
Tiplady, John, jun., 7, Upper Marylebone-street, Portland-place	J. Tiplady, Durham
Tompkins, Henry, 39, Bernard-street, Russell-square; Great James-street,	I. Gell, Lewes; J. Sowton, Great James-street
Tootal, Montague Robert, 51, Finchley-new-road, St. John's-wood	J. Wheeler, John-street, Adelphi; J. B. Merriman, Austin Friars.
Turner, William, 8, New Church-street, Paddington; Windsor-terrace	G. Wood, Rochford
Voules, Hen. Edmund, 12, Alfred-place, Brompton	A. J. Lane, Essex-street; T. Clark, Dean's Court
Waring, John Hugh, 22, Acre-lane, Brixton	T. C. Campbell, Essex-street
Way, Charles, Charterhouse,	H. J. Mant, Bath; F. Bridges, Red-lion-square
Wayman, Ephraim, 26, Palham-road, Brompton; Giron	E. Foster, Cambridge
Welch, Charles, 4, Manchester-street, Argyle-sq.	J. J. Brettell, Staple-inn; T. M. Wilkin, Furnival's-inn
Williams, Charles, 31, Alfred-place, Bedford-square	W. Williams (dec.), Alfred-place; G. Williams, Alfred-place, Bedford-square
Wingfield, Hy. Geo. Eden, Kingston-upon-Thames	J. Weymouth, Temple-chambers, Fleet-street
Winter, George, Chesterton; Cambridge	G. J. Twiss, Great Shelford; F. Grain, Cambridge
Winter, James John, Heigham, near Norwich	J. Winter, Heigham

Added to the List pursuant to Judge's Orders.

Chambres, William, 12, Wakefield-st., Regent-square; Denbigh	Richard Williams, Denbigh
Fielding, Henry, 6, Store-street, Canterbury; 14, Gray's-inn-square	H. Kingsford, Canterbury
Hughes, Walter, jun., 5, York-gate, Regent's-pk.	J. Kearsey, 17, Bucklersbury
King, Arthur Wightwick, 4, St. John's wood ter.	Baldwyn and Morgan, Chepstow.
Swan, John, Lincoln	W. Allison, Louth; R. Swan, Lincoln

PROFESSIONAL LISTS.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Jan. 24th, to 17th Feb. 1854, both inclusive, with dates when gazetted.

Birch, James, and Wm. Reynolds Prideaux, 6, Great Winchester Street, City, Attorneys and Solicitors. Jan. 24.

Gerard, Robert D., Alexander Brown, and Robert Stainbank, Ceylon and London, Attorneys (so far as regards the said Robert Stainbank). Jan. 31.

Hall, Edward, and Thomas Ridley, Newcastle-on-Tyne, Attorneys and Solicitors. Feb. 7.

Porritt, William Henry, and John Swithinbank, Leeds. Attorneys and Solicitors. Jan. 27.

Stevens, Thomas Brook Bridges, and Geo. Bonnor, Marlborough Chambers, 49, Pall Mall, Attorneys and Solicitors. Jan. 27.

Taunton, William, and Charles John Blount, Worcester, Attorneys and Solicitors. Feb. 10.

Thistlewood, John, and George Henry

Thistlewood, 6, Pancras Lane, Queen Street, Cheapside, Attorneys and Solicitors. Jan. 24.

PERPETUAL COMMISSIONERS.

Appointed under the Fines and Recoveries' Act, with dates when gazetted.

Lingard, Richard Boughy Monk, Wath-upon-Dearne, in and for the West Riding of the County of York. Jan. 24.

Lovibond, Henry, Bridgwater, in and for the County of Somerset. Jan. 31.

Peake, Thomas Hugh, Worcester, in and for the City of Worcester, also in and for the County of Worcester. Feb. 10.

COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

Appointed under the 16 & 17 Vict. c. 78, with dates when gazetted.

Baker, John, Ilminster. Feb. 14.
 Bernard, Henry, Wells. Feb. 17.
 Bickersteth, John Pares, Salisbury. Feb. 10.
 Campion, Robert Taylor, Exeter. Jan. 27.
 Chinery, George Whitmore, Twickenham. Feb. 10.

Cornish, Thomas, Penzance. Feb. 10.
 Essery, Richard Aubrey, Swansea. Feb. 13.
 Evans, George Edward, St. Helier, Jersey. —
 Francis, William, Trannemere. Jan. 31.
 Gill, James, Birkenhead. Feb. 10.
 Hooker, Ayerst, Faversham. Feb. 10.
 Jacques, Frederick Viel, Bristol. Feb. 7.
 Jagger, Charles, New Malton. Jan. 31.
 Jones, John Parry, Denbigh. Feb. 3.
 Morris, George, jun., Shrewsbury. Feb. 14.
 Owen, William, Liverpool. Jan. 31.
 Prescott, Geo. Wm., Stourbridge. Feb. 17.
 Skipworth, Philip George, Wakefield. Jan.

27.
 Twist, John Brown, Coventry. Feb. 3.
 Walmisley, John Braddock, Marple, Stockport. Feb. 3.

NOTES OF THE WEEK.

CONVEYANCING LECTURES AT THE INCORPORATED LAW SOCIETY.

THE meeting appointed by Mr. Wilson, the conveyancer, to hear and consider the points arising out of his course of lectures, on which the students may require explanation, has been fixed for *Wednesday, the 8th March*, at 8 o'clock in the evening, in the Hall of the Society.

NEW MEMBER OF PARLIAMENT.

Lawrence Palk, Esq., for the Southern Division of the County of Devon, in the room of Sir Ralph Lopes, Bart., deceased.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

Attorney-General v. Mayor, &c., of Rochester.
 Feb. 14, 16, 1854.

CHARITABLE BEQUEST. — MISAPPROPRIATION OF FUNDS. — LAPSE OF TIME. — SCHEME. — APPEAL COSTS.

Under a will dated in 1579, a charitable gift was made to the corporation of R. for the relief of poor travellers, &c., not being common rogues, and it appeared by an indenture in 1593 the funds were settled for the performance of the charitable uses, and by a decree in the reign of Charles 2 the funds were apportioned among the several parishes of R. The parish officers having devoted the payments in discharge of poor-rates, the Master of the Rolls directed a scheme on an information. An appeal from his decision was dismissed, with costs.

THE testator, Mr. Richard Watts, by his will, dated in August, 1579, devised a house and certain other property to the mayor and four citizens of Rochester, in trust to sell the same and to apply the yearly profits of the proceeds to the perpetual relief of the almshouses already erected in the city, and he directed that such almshouses should be re-edified and added to as therein mentioned for the comfort, placing, and abiding of the poor within the city, and for provision to be made for the lodging of poor travellers or wayfaring men, not being common rogues, for one night unless in case of sickness, and also for the providing flax, hemp, &c., to set the poor of the city awork according to the 18 Eliz. c. 3. It appeared that in April, 1593, an indenture was executed settling the funds for the performance of the charitable uses of the will, and in the reign of Charles 2 a decree was made by Lord Chancellor Nottingham apportioning the funds among the several parishes of St. Nicholas, St. Margaret's, Stroud, and Chatham. The income was now considerably increased, and the parish

officers had devoted the payments to them in discharge of the poor-rates, whereupon this information had been filed for a scheme, and the Master of the Rolls had accordingly directed a scheme, whereupon this appeal was presented.

Solicitor-General, W. M. James, and Terrell in support of the information; *R. Paimer and G. M. Giffard* for the trustees of the municipal charities of Rochester; *Lloyd and Lewis* for the corporation; *Campbell and Messiter* for the parish of St. Nicholas; *Glasse and Heberden* for the parish of St. Margaret's; *Vincent* for the parish of Stroud, in support of the appeal; *Bevir* for the parish of Chatham, which had not appealed.

The Lords Justices said, that the appeal must be dismissed, with costs.

Harrison v. Mayor, &c., of Southampton. Jan. 24, 1854.

ENROLMENT OF DECREE AFTER EXPIRATION OF SIX MONTHS. — ORDER 2 OF MAY 7, 1852.

An application, made with the consent of all parties, was granted to enrol a decree, notwithstanding the lapse of six months limited by the 2nd Order of Aug. 7, 1852, for the purpose of appealing to the House of Lords, where the omission arose from inadvertence and the sum in dispute was large.

C. T. Simpson appeared in support of this application, for leave to enrol the decree herein, notwithstanding the six months limited by the 2nd Order of Aug. 7, 1852, had expired. The application was by consent of all parties, in order to prosecute an appeal to the House of Lords from the decision of the Lords Justices (reported 22 Law J., N. S., Ch., 372)—the value of the property in question exceeding 100,000*l.* The non-enrolment had arisen from inadvertence.

The Lords Justices granted the application.

Master of the Rolls.

Leigh v. Leigh. Jan. 24, 1854.

BEQUEST IN TRUST FOR ALL THE PRESENT BORN CHILDREN OF TESTATRIX'S BROTHER.—SHARE OF ONE DYING.

A testatrix gave the residue of her personal estate in trust, as to two-sevenths for her brother for life, and after his death to be equally divided between all his present born children, their executors and administrators, share and share alike: Held, that on the death of one before the testatrix, the share of such one went among the survivors.

The testatrix, by her will, gave the residue of her personal estate in trust as to two-sevenths, for her brother for life, and after his death to be equally divided between all his present born children; their executors and administrators, share and share alike. It appeared that one of the brother's children (of whom there were four at the date of the will) died before the testatrix, and the question now arose on the death of the brother, who survived the testatrix several years, whether the share of such child lapsed or went among the surviving children.

Lloyd and Hobhouse for the children; Gooden, Welford, and Baggallay for the next of kin.

The Master of the Rolls said, that the gift was clearly made to a class, and that the share of the deceased child was divisible among the survivors.

Wilbraham v. Linsay. Feb. 10, 14, 1854.

AGREEMENT FOR UNDERLEASE.—SPECIFIC PERFORMANCE.—COVENANTS OF ORIGINAL LEASE.—USUAL COVENANTS.

On an agreement being entered into for an underlease, nothing was said as to the covenants. It appeared that the original lease contained a covenant, prohibiting the carrying on the trade of a vintner or auctioneer, or any other obnoxious trade. On the defendant, who was about to set up as a newspaper printer, refusing to complete with this covenant in the underlease, a decree was made for a specific performance, subject to a reference as to title, but held that he was only bound to enter into "the usual covenants."

This was a suit for the specific performance of an agreement, dated in December last, for an underlease to the defendant, of certain premises in the Strand. It appeared that nothing had been said as to the covenants, and that the defendant proposed to erect a steam engine to print the *Empire* newspaper. The defendant objected to a covenant in the draft lease, that he should not carry on the trade of a vintner or auctioneer, or any other obnoxious trade, but which was insisted on, as the original lease contained a similar covenant. The question now arose, whether the plaintiff could be presumed to have had notice of the covenants in the original lease, whether usual or not.

Roupell and W. W. Cooper for the plaintiff, cited Cosser v. Collinge, 3 Myl. & K. 283.

R. Palmer and J. V. Prior for the defendant, on the ground that the covenant was an unusual one.

The Master of the Rolls said, that the plaintiff was entitled to a decree, but that the defendant was only liable to enter into the usual covenants, and directed a reference as to title.

Shea v. Boschetti. Feb. 11, 15, 1854.

WILL.—ALTERATIONS.—PROBATE WITH FAC-SIMILE.

A testator by his will, gave the residue of his estate to three trustees therein-mentioned ["upon the several trusts, nevertheless, and to and for the ends, intents, and purposes hereinafter expressed and declared] of and concerning the same, that is to say"—in trust to apply the income for the use of his daughter for life, and after her death to her children, but in default to his nephew. The words in brackets were struck out, together with the trustees' names, and the daughter's name was interlined. Probate was granted with fac-simile will: Held, that the will must operate as it originally stood.

The testator, John M. Boschetti, of Gibraltar, by his will, dated November, 1832, gave the residue of his estate to three trustees therein-mentioned ["upon the several trusts, nevertheless, and to and for the ends, intents, and purposes hereinafter expressed and declared,] of and concerning the same, that is to say," in trust to apply the income for the use of his daughter, the plaintiff, for life, and after her death to her children, but in default thereof to his nephew, the defendant. It appeared that the testator had, in Aug. 1833, struck out the trustees' names and interlined his daughter's name, and the words between brackets. Probate had been granted of the will as it originally stood, by the Supreme Court of Gibraltar, but on an appeal to the Privy Council, probate had been granted with a fac-simile copy of the will.

Solicitor-General, Addams; D. C. L., Rogers, and Babington for the plaintiff, in this claim, which was now filed for a declaration of the construction of the will, contended, that the original trusts were cancelled, and that she took an absolute, and not merely a life interest.

Roupell and Giffard for the defendant.

Cur. ad. vult.

The Master of the Rolls said, that the plaintiff took a life interest in the residue, with remainder at her death to her children, if any, and in default thereof to the defendant.

Vice-Chancellor Kindersley.

Willcocks v. Brown. Jan. 18, 1854.

ALLOWANCE OF MAINTENANCE TO INFANT YOUNGER CHILDREN, OUT OF PORTION CHARGED ON ESTATE WHERE TENANT IN TAIL INFANT.

A testator, by his will, gave all his real estate

in trust for his son on attaining 25 for life, with remainder to his first and other sons in tail male, and he declared that in case his son should have any children other than an eldest son, the trustees should, after his son's death, raise a sum for portions of such other children, to be payable as the son should appoint, and in default thereof to be equally divided among such other children, and payable on their severally attaining 21 if the son were dead, or on his death if not then dead: Held, that inasmuch as the son's eldest child was an infant, and there was no provision for maintenance, none could be made.

THE testator, by his will, gave all his real estate in trust for his son on attaining the age of 25 for life, with remainder to his first and other sons in tail male, and he declared that in case his son should have any child or children other than an eldest or only son, the trustees should, after his son's death, by demise or mortgage for a term of years, raise a sum of 5,000*l.* for portions of such other child or children, to be payable as the son should appoint, and in default thereof to be equally divided among such other children, and payable on their severally attaining 21, if the son were dead, or on his decease if not then dead. On the death of the testator's son without having appointed, and leaving four children, all of whom were infants, a question arose, whether the three younger children were entitled to present maintenance.

Reilly for the plaintiff and eldest son; *E. Webster* for the other children.

The Vice-Chancellor said, that as the plaintiff was an infant, and the interests of the others did not vest until 21, and might not by reason of their previous death be raiseable at all, no order could be made in the absence of any direction in the will for present maintenance as against the plaintiff, notwithstanding he joined in the application.

Vice-Chancellor Stuart.

In re Northern and Southern Connecting Railway Company, in re Mercer. Jan. 19, 1854.

WINDING-UP ACTS.—SUMMONING WITNESS BEFORE MASTER.—TENDER OF EXPENSES OF JOURNEY.—CONTEMPT.

Held, that where a witness is summoned before the Master by an official manager, he is entitled to have tendered to him the costs of his journey with the subpoena, notwithstanding he may be afterwards shown to be a contributory.

A motion was therefore refused, with costs to come out of the estate, to commit a party summoned where such tender had not been made.

THIS was a motion on behalf of the official manager of the above railway company to commit Mr. Fletcher Mercer, of Gainsborough, for contempt in not appearing pursuant to a sum-

mons before Master Humphry, on May 10 last, to prove his execution to a document. It appeared that his travelling expenses had not been tendered on the service of the summons.

By the 11 & 12 Vict. c. 45, s. 63, it is enacted, that "it shall be lawful for the Master, as well before as after the order absolute, to summon before him any person, whether a contributory of such company or not, who shall be, or shall be deemed to be, capable of giving information concerning such company, or the estate, dealings, or affairs thereof;" "and every person so summoned who shall not come before the Master," "shall be liable to be committed to the Queen's Prison: Provided always, that every such default or refusal shall be certified by the Master, and thereupon such order shall be made by the Court, upon motion for that purpose, of which notice shall be given to the person sought to be affected, as the Court shall see fit;" and s. 64 enacts, that "every person summoned before the Master as a witness shall be entitled to such costs and charges as are by law allowed to witnesses; but that where any person who at the time of the order absolute was a contributory of such company shall be summoned as aforesaid, every such person shall have such costs and charges only, if any, as the Master in his discretion shall think fit; but in all such cases the Master may suspend the payment of such costs until such time as he shall think reasonable."

Roxburgh, in support, referred to 12 & 13 Vict. c. 108, s. 9, which directs, that the word "contributory" shall include alleged contributories as respects the attendance and representation of parties.

Daniel and *Hetherington*, contra, were not called on.

The Vice-Chancellor said, that until the party summoned was proved to be a contributory, he was entitled to be placed in the more favourable position of a witness, and to have the costs of his journey tendered with the subpoena. The motion would be refused,—the costs to come out of the estate.

Vice-Chancellor Wood.

In re Heritage and National Land Company. Jan. 30; Feb. 11, 14, 1854.

PETITION BY OFFICIAL MANAGER FOR TAXATION OF COSTS OF MORTGAGEE'S SOLICITOR.—PRESSURE.—OVERCHARGES.

At a meeting held to execute a deed conveying certain property, purchased on behalf of a land company by C., to the official manager on its proving abortive, the solicitor to the mortgagee thereon declined to complete without payment of his bill of costs. Payment was accordingly made under protest: Held, that it was necessary to show overcharges, in order to obtain a taxation after the lapse of more than a year—and where the items complained of were caused by C.'s conduct,

a taxation was refused—costs to come out of the estate.

Held also, that the official manager must present his petition in the addition of his name and not as "official assignee," without more.

THIS was a petition on behalf of the official manager of the above company for the taxation of the bill of costs of the solicitor of Mr. John Cooke, a mortgagee, on an estate purchased for the company. It appeared that a meeting was held to execute a deed, conveying the estate, which had been contracted for by Mr. O'Connor on behalf of the company, to the official manager, but that Mr. Cooke's solicitor attended and declined to complete without payment of his bill of costs, and that it had been accordingly paid under protest. The petition, which was presented as "official manager" without more, had been directed to be amended by the insertion of his name.

Rozburgh in support, on the ground of pressure, and that proof of overcharges was unnecessary, citing *In re Phillpotts*, 2 W. R. 3, ante, p. 33; *In re Barrow*, ante, p. 163, and contended the taxation should be as between mortgagor and mortgagee.

Chandless contra, on the ground that more than a year had elapsed since the payment.

Cur. ad. vult.

The Vice-Chancellor said, that the case of *In re Phillpotts* had been decided upon the fact of overcharges which had been admitted, —the question being whether there was pressure, and that it was necessary overcharges should exist in order to support the application. As, however, the charges complained of had arisen from Mr. O'Connor's conduct, they could not be objected to, and the petition must be dismissed, with costs to be paid by the official manager, to be reimbursed out of the estate, as the Master had thought the matter required further investigation.

Court of Queen's Bench.

Regina v. Wood. Jan. 19, 1854.

CERTIORARI.—WARRANT OF DISTRESS UNDER STAFFORDSHIRE POTTERIES' ACT.

Quære, whether a certiorari will lie to bring up the warrant of distress of a justice to levy a sum on an appeal under the 2 & 3 Vict. c. 15, s. 39, together with the costs of the distress.

But a rule was made absolute for such certiorari, in order to raise the question, whether the warrant was good or not—reserving to the defendant the right to contend that the writ would not lie.

THIS was a rule nisi for a certiorari to bring up the warrant of distress issued by the defendant, a justice of Staffordshire, to levy a sum of 22l. on an appeal under the 2 & 3 Vict. c. 15, s. 39, together with 15l. odd, the costs of the distress, upon the goods of George Stanway.

Paskley and J. E. Davis showed cause, and referred to s. 39, which provides that no such

appeal shall "be removed or removeable by certiorari, or any other writ or process whatsoever, into any of her Majesty's Courts of Record at Westminster, any law or statute to the contrary notwithstanding."

Scotland, in support, referred to the 11 & 12 Vict. c. 44, s. 2, which enacts, that "for any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he has exceeded his jurisdiction, any person injured thereby" "may maintain an action against such justice" "without making any allegation in his declaration that the act complained of was done maliciously, and without reasonable and probable cause: provided, nevertheless, that no such action shall be brought for anything done under such conviction or order until after such conviction shall have been quashed, either upon appeal or upon application to her Majesty's Court of Queen's Bench."

The Court said, that the rule for a certiorari would be made absolute in order to raise the question, whether the warrant was good or not, but it would be open to the defendant to contend the writ would not lie.

Dewhurst and others v. Clarkson. Jan. 19, 1854.

FRIENDLY SOCIETY.—APPOINTMENT OF TRUSTEES AND TREASURER.—CERTIFIED RULES.

Upon the formation of a friendly society whose rules were certified under the 4 & 5 Wm. 4, c. 40, s. 4, the defendant was appointed treasurer for life, subject to removal by bankruptcy, insolvency, or dismissal. In 1852, new rules were certified under the 13 & 14 Vict. c. 115, s. 7, under which three trustees were to be appointed, one of whom was to be the treasurer, at a general or quarterly meeting. Three persons were appointed trustees, and another person the treasurer, at a special meeting: Held, that the trustees could not recover the funds from the defendant in his hands, as the property did not vest in them under the new rules or by the 13 & 14 Vict. c. 115, s. 13.

THIS was a rule nisi to set aside a nonsuit and enter the verdict for the plaintiffs, who brought this action as trustees of a friendly society to recover from the treasurer certain moneys belonging to the society in his hands. It appeared that the defendant had been appointed to the office of treasurer on the formation of the society, and held the office under the then rules for life, except in case of bankruptcy, insolvency, or dismissal. New rules were certified in 1852, by the barrister, under the 13 & 14 Vict. c. 115, s. 7, under which three trustees were to be appointed, one of whom was to be the treasurer, at a general or quarterly meeting, but it appeared that a person not a trustee had been appointed the treasurer, and at a special and not a general meeting.

Watson and Rew showed cause against the rule, which was supported by *Atherton* and *Coyling*.

The Court (dissentiente *Erie, J.*) said, that under the 4 & 5 Wm. 4, c. 40, s. 4, all rules, alterations, and amendments therein were binding on the several members and officers of the society from the time when the same should be certified by the barrister, and could not be afterwards impeached, but could alone be altered by a general meeting of the society. As, however, one of the trustees was not the treasurer in accordance with the new rules, and the property of the society did not therefore vest in the plaintiffs under the 13 & 14 Vict. c. 115, s. 13, the rule must be discharged.

Firkin v. Firkin. Jan. 31, 1854.

COUNTY COURT.—JURISDICTION IN PLAINT BY DEVISEE WHERE WILL IN QUESTION.

In a plaint by a devisee under a will against the heir-at-law in possession, to recover rent and in ejectment, it appeared that the will was disputed but probate had been granted: Held, that the County Court had not jurisdiction under the 9 & 10 Vict. c. 95, s. 58, in respect of the freehold, but had in respect of the leasehold—the probate being conclusive; and a rule was made absolute to amend a prohibition accordingly.

THIS was a rule nisi to rescind a rule for a prohibition granted by *Martin, B.* on the Judge of the Cornwall County Court, against further proceeding in these plaints by the devisee against the heir-at-law in ejectment and for rent relating to property partly leasehold and partly freehold. It appeared that the defendant had been put in possession of certain freehold land in Cornwall during his father's lifetime, and that the plaintiff, who was a younger son, claimed under his father's will, the validity of which was however disputed, but probate had been granted in the Archdeacon's Court.

Coleridge showed cause on the ground of want of jurisdiction in the Court under the 9 & 10 Vict. c. 95, s. 58, the title being in dispute.

Kingdon, in support, cited s. 122.

The Court said, that the rule for a prohibition was right in respect of the leasehold as to which probate was conclusive, but that the rule in respect of the freehold must be made absolute.

Regina v. Justices of Middlesex. Jan. 31, 1854.

HIGHWAY ACT.—COSTS OF APPEAL, ALTHOUGH NO HEARING.—JURISDICTION OF JUSTICES.

Held, that the Court of Quarter Sessions has jurisdiction, under the 5 & 6 Wm. 4, c. 50, s. 90, to award the costs of an appeal relating to the stopping up of a highway, although there had been no hearing, by reason

of an objection being taken by the chairman to the certificate of view.

THIS was a rule nisi, granted on January 23 last, for a mandamus on the defendants to award the costs of an appeal relating to the stopping up of a highway, notwithstanding there had been no hearing. By the 5 & 6 Wm. 4, c. 50, s. 90, it is enacted, that "the Court of Quarter Sessions is hereby authorised and required to award to the party giving or receiving notice of appeal such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same shall be tried or not." It appeared that the hearing had not taken place on an objection being taken by the chairman to the certificate of view, that it was "neither, or more commodious," instead of "and," and that an application for a jury to be empanelled under s. 89 was also refused.

Stammers and Keane showed cause; *Parkley and Bridge*, in support, were not called on.

The Court said, that the decision of the justices as to the form of the certificate was judicial and not a mere suspension of the hearing of the appeal; and the rule was accordingly made absolute.

Court of Common Pleas.

Graham v. Furbur. Jan. 14, 1854.

BILL OF SALE.—SECRET AGREEMENT RESERVING RIGHT TO DEBTOR TO RE-PURCHASE.—SALE AFTER BANKRUPTCY.—ASSIGNEES' RIGHT TO RECOVER PROCEEDS.

Where, although there was a bill of sale to the defendant, the sheriff's auctioneer, of goods in execution, under writs of fi. fa., it was agreed that he should hold the same for such time as he should be disposed, in order that the debtor should be enabled to re-purchase, and the debtor afterwards became bankrupt before the sale took place: Held, that his assignees were entitled to recover the proceeds, as the transaction was void, under the 13 Eliz. c. 5, s. 2.

THIS was a motion for a rule nisi for the new trial of this action, which was brought by the assignees of a bankrupt, to recover the proceeds of the sale of certain goods sold after the bankruptcy by the defendant, under a bill of sale. (For report on another point, see *ante*, p. 59.) It appeared that on five writs of *fi. fa.* having been issued against the bankrupt, and under which his goods were seized, it was agreed that the defendant, who was the sheriff's auctioneer, should purchase them under a bill of sale, with an agreement for his holding the same for such space of time as he should be disposed, until the bankrupt could re-purchase the same out of the proceeds of the sale of the equity of redemption of his house, and it was also declared that no act of bankruptcy had been committed, and that the difficulties were only temporary. The defendant had sold after an

adjudication in bankruptcy, and the assignees now sued to recover the proceeds, and on the trial before Cresswell, J., they obtained a verdict, upon the jury finding the transfer was fraudulent under the 13 Eliz. c. 5, s. 2.

M. Chambers in support.

The Court said, that the transaction of the bill of sale was colourable, as the bankrupt had power to re-purchase, and it was fraudulent under the 13 Eliz. c. 5, and the rule would therefore be refused.

Esparte Perry. Jan. 25, 1854.

FINES AND RECOVERIES' ACT. — ORDER DISPENSING WITH SIGNATURE OF HUSBAND TO CONVEYANCE OF SEPARATE PROPERTY OF MARRIED WOMAN.

Where the husband of a married woman refused to execute a conveyance of property to which a married woman was entitled to her separate use, unless he derived some advantage: his signature was dispensed with, under the 3 & 4 Wm. 4, c. 74, s. 91.

THIS was an application under the 3 & 4 Wm. 4, c. 74, s. 91,¹ to dispense with the signature of the applicant's husband to the conveyance of certain property, to which she was entitled to her separate use.

Byles, S. L., in support, on an affidavit that the applicant was living separate from her husband, who refused to sign unless he got something, citing *In re Woodcock*, 1 G. B. 427; *In re Mirfin*, 4 M. & G. 635; 5 Scott, N. R. 166.

The Court said, the application would be granted.

Court of Exchequer.

Down v. Pinto. Jan. 21, 1854.

ACTION BY SUPERINTENDENT OF WORKS TO RECOVER WAGES ON DISMISSAL.—CONSTRUCTION OF AGREEMENT OF HIRING.

The defendant, by letter, required the plaintiff, whom he engaged as superintendent of

smelting works in Spain, to enter into an engagement to remain with him three years at his (the defendant's) option, and to visit some of the principal smelting houses in this country before he started: Held, that the service reckoned from Feb. 1, 1850, the time of his setting out on such inspection, and not from March 3, when he arrived in Spain, and that he was therefore entitled, on his dismissal on Feb. 15, 1851, to recover the second year's salary, and especially inasmuch as the first half-year's salary was paid on July 1.

THIS was a rule nisi to set aside the verdict for the plaintiff and enter it for the defendant, or for a new trial, in this action, which was brought by the plaintiff to recover a year's salary on his dismissal as superintendent of certain smelting works at Carthagena, in Spain. It appeared that the defendant had written to the plaintiff requiring him to enter into an engagement to remain with him three years at his (the defendant's) option, and to visit some of the principal smelting works in England and Wales before he started for Spain, and that the plaintiff had thereupon set out on such inspection on Feb. 1, 1850, and had not arrived in Spain until March 3. It also appeared that the first half-year's salary was paid on July 1; and that the plaintiff had been dismissed on Feb. 15, 1851, whereupon this action was brought. On the trial before *Talfourd*, J., the plaintiff obtained a verdict with 240*l.* damages.

Crowder and *Maynard* showed cause against the rule, which was supported by *M. Smith* and *Phims*.

The Court said, that the defendant had only the option of dismissing the plaintiff at the end of one, two, or three years, but not at any time, and that therefore as the service must be reckoned from Feb. 1, and not from the time of the arrival in Spain, the plaintiff was entitled to recover for the second year's salary, and the rule would therefore be discharged.

Beavan v. Macdonnell. Nov. 22, 1853; Jan. 16, 1854.

CONTRACT FOR PURCHASE OF PROPERTY.—FORFEITURE OF DEPOSIT.—SUGGESTION OF PURCHASER'S LUNACY.—BONA FIDES OF VENDOR.

The plaintiff had entered into a contract for the purchase of property, and had paid the deposit under conditions for its forfeiture on nonpayment of the remainder within a certain period after the delivery of the abstract of title and non-delivery of objections: Held, that he could not recover back such deposit on the forfeiture having accrued, by reason of his being lunatic at the time of contract, where it appeared the defendant had entered into the same fairly and in good faith, and without knowing the plaintiff was lunatic or of unsound mind.

THIS was an action to recover back the

¹ Which enacts, that "if a husband shall, in consequence of being a lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, or shall from any other cause be incapable of executing a deed, or of making a surrender of lands held by copy of Court roll, or if his residence shall not be known, or he shall be in prison, or shall be living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatsoever, it shall be lawful for the Court of Common Pleas at Westminster, by an order to be made in a summary way upon the application of the wife, and upon such evidence as to the said Court shall seem meet, to dispense with the concurrence of the husband in any case in which his concurrence is required by this Act or otherwise."

amount of a deposit on the purchase of certain lands and premises, under a contract entered into by the plaintiff, on the ground that at the time of entering into the same he was a lunatic and of unsound mind, and incapable of managing his affairs. It appeared that by the agreement, an abstract was to be delivered within four weeks, and any objections thereto were to be taken within two months from such delivery, and that if none were so taken, the title should be considered as accepted, and a conveyance be made on payment of the residue of the purchase-money on March 25, 1852, and that the deposit should be forfeited if the plaintiff should neglect to comply with the above conditions. No objections having been delivered to the abstract, the defendant claimed the deposit as forfeited. The case now came on upon demurrer to the rejoinder, setting out that the defendant entered into the contract fairly and in good faith, and without knowing the plaintiff was lunatic or of unsound mind.

Skinner in support; *Willes*, contra.

Cur. ad. vult.

The Court said, that the case fell within the principle of *Molton v. Camrous*, 2 Exch. R. 487; 4 Exch. R. 17, and that the plaintiff was not entitled to recover back the amount of the deposit; and the judgment must therefore be for the defendant.

Court of Criminal Appeal.

Regina v. Hewgill, clerk. Feb. 11, 1854.

CONVICTION FOR OBTAINING MONEY UNDER FALSE PRETENCE OF "ORDER."—WHERE A "LETTER" HAD BEEN PRETENDED.

*On the trial of an indictment against a curate for falsely pretending he had received an "order" from his vicar for the payment of his quarter's salary, and upon which he had obtained 15*l.*, it appeared that he had stated he had received a "letter" from his vicar for such purpose. The conviction was confirmed.*

THIS was an indictment against the curate of Crofton, Titchfield, for falsely pretending to a Mr. Walters that he had received an order from his vicar on a Mr. Layton for the payment of his quarter's salary, amounting to 25*l.*, due to him, and upon which he had obtained 15*l.* from Mr. Walters. It appeared on the trial, at the Hampshire Quarter Sessions, that the prisoner had stated he had received a letter from his vicar requesting Mr. Layton to pay the 25*l.*, and that he had called on Mr. Layton, who was ill, and said he should therefore be obliged to Mr. Walters to let him have the money—whereupon he had obtained 15*l.* The prisoner had received no letter, nor was any salary due, and he was convicted, subject to a point reserved whether the variance was fatal.

C. Saunders for the prisoner.

The Court said, that the conviction must be affirmed.

Regina v. Inhabitants of Hornsea, Yorkshire, East Riding. Feb. 11, 1854.

INDICTMENT FOR NON-REPAIR OF ROAD.—WHERE DESTROYED ENTIRELY BY ENCROACHMENTS OF SEA.

On an indictment against the defendants for the non-repair of a road to the sea, it appeared that a large portion had been entirely swept away by the encroachments of the sea: Held, that they were no longer liable to repair, nor to make an available road to the sea.

THIS was an indictment for the non-repair of a road called the sea-road, which had been set out by commissioners under the authority of an Act passed in 1801, for enclosing common and waste lands, and which had been repaired by the defendants until a portion of it was entirely swept away by the encroachments of the German Ocean. The point reserved on the trial before *Martin, B.*, was, whether the defendants were bound to provide an available road.

Bliss for the defendants; *Hall* in support of the prosecution.

The Court said, that the road, which ran to the beach, had been washed away and destroyed by natural causes without the fault of any body, and that the liability to repair no longer existed. The defendants were therefore entitled to judgment, and an application for the costs of the prosecution was refused on the ground of want of jurisdiction.

Regina v. Green. Feb. 11, 1854.

INDICTMENT FOR EMBEZZLEMENT AGAINST BAILIFF.—OBTAINING MONEY UNDER FALSE PRETENCES.

The prosecutor's bailiff, who was in the habit of receiving and paying moneys, had overcharged certain payments to labourers, and brought in the prosecutor his debtor to an amount which he had paid: Held, that an indictment would not lie for embezzlement but for obtaining moneys by false pretences.

THIS was an indictment for embezzlement against the prisoner, who was bailiff of the prosecutor, and was in that capacity in the habit of receiving and paying moneys, and it appeared that he had overcharged in his accounts certain payments to harvest labourers, amounting to 1*l.* 7*s.*, bringing in the prosecutor as his debtor for 2*l.* odd, which he had paid. The prisoner was found guilty on the trial at the Gloucester Sessions, subject to the point reserved, whether the offence amounted to embezzlement.

Tozer for the prisoner.

The Court said, that the prisoner should have been indicted for obtaining money by false pretences, and the conviction was accordingly quashed.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, MARCH 4, 1854.  
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THE ECCLESIASTICAL COURTS.

TESTAMENTARY JURISDICTION.

THE Lord Chancellor has opened his battery against the Ecclesiastical Courts, with a degree of resolution and precision which could not fail to carry consternation and dismay into ranks worse disciplined, and less accustomed to the noble science of self-defence, than our friends at Doctors' Commons. After an unsuccessful siege of more than twenty years, it is not surprising that the besieged should regard the threatened bombardment with equanimity; but we are curious to learn how Lord Cranworth hopes to prevail against the strategy which has defeated so many of his predecessors. After recounting the abortive efforts of various Commissions and successive Chancellors—from Lord Brougham to Lord St. Leonards inclusive—the present Chancellor, upon introducing his Bill, *naively* accounted for the failure of previous attempts as follows:—"The fact, I believe to be this,—that such an amount of influence was brought to bear against those Bills, by persons whose interests were, or were supposed to be, affected by them, that *it was useless to attempt to pass them.* This, too, was probably the reason why no fresh attempt at legislation was made while Lord Cottenham held the Great Seal." Here, at all events, we have a candid avowal—and from the highest authority—of the influences which operate upon rulers and legislators, and an instructive lesson may be deduced from it, showing the resistive power of a body limited in number but united in purpose.

As Lord Cranworth has not thought fit to explain, by what "conjunction" he expects to steer the Bill, now just introduced, clear of the influences which ship-

wrecked so many former Bills, we confess to some misgivings whether the testamentary jurisdiction of the Ecclesiastical Courts will expire with the year 1854, the more especially when we find the Chancellor accounting for the failure of Lord Brougham's Bill in 1832, by reminding the House of Lords that "1832 was the year of the passing of the Reform Bill;" and observing, "it was not surprising that a Bill concerning the Ecclesiastical Courts should not then have made progress." We have now, not only a Reform Bill, but the commencement of a Continental War, which, it is already admitted, is not likely to be a *little war*, and if, with all this and much more on hand, the Government, of which Lord Cranworth is so distinguished a member, succeeds this Session in carrying out their proposal for Ecclesiastical Courts Reform, it will exhibit an unquestionable proof of legislative energy and parliamentary authority.

The statement in which the Lord Chancellor explained the important change proposed to be made in the law and practice relating to matters testamentary, naturally divided itself;—1st, into an enumeration of the evils of the present system; and 2ndly, a description of the remedies proposed.

The defective nature of the existing jurisdiction, and the anomalies arising out of it, were clearly and forcibly embodied in the following propositions:—

1st. There is no more reason why wills should be the subject of Ecclesiastical cognizance, than deeds, or any other matters relating to the transfer of property.

2nd. Under the present system, the question whether or not an instrument left by a deceased person is, or is not, his will, may be decided by no less than 386 different tribunals, scattered all over the kingdom.

3rd. In many of the petty tribunals, there are not functionaries competent to deal with the difficult and delicate questions arising upon proof of contested wills.

4th. Few of the minor jurisdictions have proper places for preserving wills.

5th. The number of jurisdictions leads to a multiplication of appeals, and much uncertainty as to the limits of jurisdiction.

6th. The doctrine of *bonâ notabiliâ* causes inconvenience, injustice, and unnecessary expense.

7th. There is a distinction between the cognizance of wills of real estate and wills of personal estate; the Ecclesiastical Courts having the cognizance of personal property, and the temporal Courts of real property.

The propositions thus distinguished numerically, may be regarded as the several counts in the indictment prosecuted by the Government against the Ecclesiastical Courts. The proposed remedies are founded, in a great degree, but not altogether, upon the report of the commission. In some instances, the Government has adopted the recommendation of the minority of the Commissioners rather than of the majority.

The leading features of the measure announced by Lord Cranworth, may be thus described.

1st. The abolition of all existing tribunals, for the proof of wills, and the transfer of jurisdiction to a Civil, and not an Ecclesiastical Court.

2nd. The contentious jurisdiction exercised by the various Ecclesiastical Tribunals to be in future vested in the Court of Chancery.

3rd. All the staff of the Ecclesiastical Courts, as it now exists, to be transferred to the Court of Chancery.

4th. To constitute one principal Registrar to transact all the common form, or non-contentious business.

5th. To allow solicitors, as well as proctors, after a limited period, to prove wills in the common form.

7th. To establish District Courts (rather more numerous than the Diocesan Courts), for proving wills of a non-contentious character, where the assets do not exceed 1,500*l*.

8th. That an original will proved in the country shall remain in the country for six months, to allow the opportunity for inspection, and shall then be transmitted to London, and a copy returned to the country.

9th. That probate shall extend to real as well as personal estate.

As may be expected in a measure of such magnitude and importance, those who are disposed to approve it as a whole, dissent from some of the specific provisions to be embodied in the Government Bill.

A majority of the Commissioners recommended the creation of a *new Court*, to be called "a Court of Probate," in which the jurisdiction in all testamentary matters should be vested, but the Chancellor adopted in preference the opinion of a minority of the Commissioners, consisting of the Master of the Rolls, the Solicitor-General, and Sir James Graham, and upon the authority of their recommendation, proposes that the jurisdiction shall be transferred to the Court of Chancery. This arrangement proceeds upon the assumption, that the Ecclesiastical Court is not occupied above 60 days in the year in contentious matters, and that the business arising from this branch of jurisdiction, if divided amongst the four Judges of the Court of Chancery having original jurisdiction, would be easily absorbed, occupying each of the four Judges only 15 days in a year.

The accuracy of the calculation by which it is estimated that 60 days would be sufficient to dispose of the contentious business has been publicly questioned, and it is alleged, that the statement has reference only to the Prerogative Court of Canterbury, and that no estimate has been made of the number of days occupied in contentious business in other Courts.

Lord St. Leonards, whilst he emphatically declared that "the Ecclesiastical Courts should not be allowed to remain any longer in existence," and agreed with the Lord Chancellor, and a minority of the Commissioners, that the jurisdiction should be transferred to the Court of Chancery, protested against the proposal to subject *real estates* to the same rules as personal property, on the ground that it would unnecessarily impose an additional burthen upon real estate already sufficiently burdened.

Amongst the Legal Profession generally, that portion of the measure the expediency of which appears to be most questioned is, the proposal to appoint district Courts in the country for disposing of non-contentious cases where the amount of assets is limited. It is objected, that this arrangement destroys the symmetry of the scheme, and merely substitutes one class of local tribunals for another.

For the reasons already suggested, we are not sanguine that the Bill will obtain the sanction of the Legislature during the

Session of Parliament: at all events, opportunities may be expected to its progress for discussing the

COMMON LAW PROCEDURE BILL.

The Lord Chancellor on Monday last introduced the second Common Law Procedure Bill, founded principally on the Common Law Commissioners' Second Report, but with some variations. We shall for the present merely call attention to the principal points noticed by his Lordship in describing the scope of the proposed amendments, and reserve our remarks until the Bill has been printed.

Jury.—The Commissioners recommended, that by consent of both parties an action might be tried without a jury. The Lord Chancellor has provided, that the consent of the Judge must be obtained, and that the privilege be confined to a certain class of cases.

The rule requiring the jury to be unanimous is retained, but they are to be allowed moderate refreshment and fire, and to be discharged if they cannot agree in their verdict at the expiration of a limited time.

The special and common juries are to be amalgamated, and the qualification of the latter somewhat raised.

Evidence.—Documentary evidence now required to be proved *vidæ voce*, may, in certain cases be proved out of Court; and where a document has been attested by a witness, the rule requiring such witness to be called is to be abolished, except in regard to wills.

Another alteration is, that witnesses having conscientious scruples in respect to taking an oath, may be examined, although not members of a sect specially excepted by the Legislature, provided the Judge be satisfied that the scruple is *bond fide*.

Hitherto the handwriting of persons executing deeds and instruments has not been allowed to be proved by comparison with other documents admitted to be genuine. This rule is to be abrogated.

It will also be provided, that a document improperly stamped, may be admitted in evidence, upon paying into Court a sufficient sum to cover the stamp and penalty.

Examination of parties before trial.—It is proposed, also, that the plaintiff may examine the defendant on written interrogatories attached to his declaration, and the defendant may do the like on delivering his plea.

Equitable defences are also to be allowed.

Matters of account.—Actions relating to complicated accounts may be referred to accountants, and in certain cases to a County Court Judge. A summons should be taken out in an early stage of the case, and the Judge empowered to refer the question to an arbitrator.

Trials.—It is proposed that the plaintiff should have a right of reply, although no witnesses be called for the defence; and the defendant's counsel be also entitled to the privilege of a second address at the conclusion of his evidence.

Common Law injunctions.—It is also proposed that a Court of Common Law may issue an injunction to prevent future trespasses, nuisances, &c.

Specific performance of contracts.—The recommendation of the Commissioners to enable the Common Law Courts to order a specific performance of a contract, has not been adopted.

Execution.—*Choses in action.*—The power of attaching or taking in execution debts as in the City of London, and a few other places, is to be extended generally.

NEW STATUTES EFFECTING ALTERATIONS IN THE LAW.

17 VICT. C. 1.

ASSESSED TAXES' ACT AMENDMENT.

THE preamble recites 16 & 17 Vict. c. 90.

Duties contained in Schedule (F.) of recited Act to be deemed to have been granted and made payable thereby; s. 1.

Exemption No. 2 in the said Act to extend only to the duties contained in Schedule (E.) in certain cases; s. 2.

Horses used by common carriers occasionally conveying passengers to be charged only under Schedule (F.); s. 3.

Time for giving notice to determine compositions extended; s. 4.

Justices of the peace in Ireland may administer oaths required by the Acts relating to the Income Tax; s. 5.

The following are the Title and Sections of the Act:—

An Act to explain and amend an Act of the last Session relating to the Duties of Assessed Taxes; and to authorise Justices of the Peace in Ireland to administer Oaths required in Matters relating to Income Tax.

[17th February, 1854.]

Whereas an Act was passed in the last Session

of Parliament, 16 & 17 Vict. c. 90, to repeal certain duties of assessed taxes, and to grant other duties of the same description: And whereas by reason of certain errors and omissions in the said Act doubts have arisen as to the construction and meaning thereof in some particulars, and it is expedient to remove such doubts, and to amend the said Act: And whereas it is also expedient to amend the Act passed in the last Session, chapter 34: Be it enacted and declared as follows:—

1. The duties described or mentioned and set forth in the Schedule marked (F.) to the said Act annexed as duties payable annually for all horses and mules not charged with duty under Schedule (E.) of the said Act shall be deemed and are hereby declared to be and to have been granted and made payable by the said Act from and after the 5th day of April, 1854, in England and Wales and Berwick-upon-Tweed, and from and after the 24th day of May in Scotland, notwithstanding the omission to mention the said Schedule (F.) in section 2 of the said Act, purporting to enumerate the several Schedules containing the duties intended to be thereby granted and made payable; and the said Schedule (F.), and the duties, rules, regulations, and exemptions therein set forth or contained, shall have effect and be in force as if the said Schedule (F.) had been enumerated in the said section along with the several other Schedules therein mentioned.

2. The Exemption No. 2, under the head or title of "Exemption from the Duties contained in Schedules (E.) and (F.)," in the said Act, shall be deemed and construed and is hereby declared to extend only to exempt any person from the duties contained in Schedule (E.) of the said Act for one such horse as in the said Exemption No. 2 is described, used for riding on the occasions and in manner therein mentioned; and nothing in the said Exemption shall be deemed or construed to extend to exempt any person from the duties contained in Schedule (F.) of the said Act, for any such horse as aforesaid, except where the same shall be kept for the purpose of husbandry, and used only for such purpose, and for riding on the occasions and in manner in the said Exemption No. 2 mentioned.

3. For any horse used by any common carrier in drawing any carriage used by him principally and *bona fide* for and in the carrying of goods, and occasionally only in conveying passengers for hire, in the manner mentioned with respect to such carriage in Schedule (D.) of the said Act, there shall not by reason of such using be charged any other or higher duty than the duty contained in the said Schedule (F.)

4. The time limited by section 6 of the said Act for the giving of notice to determine any contract of composition for the duties of assessed taxes shall be and is hereby extended to the 5th day of April, 1854; and any such notice as in the said section 6 is mentioned, given on or before the said last-mentioned day,

shall have the same force and effect as it would have had if it had been given within the time limited by the said section.

5. And whereas by the several Acts in force relating to the duties granted by an Act passed in the last Session of Parliament, chapter 34, on profits arising from property, professions, trades, and offices, divers oaths are required to be taken by persons appointed assessors and collectors of the said duties, and by persons claiming exemption from or a return or repayment of the said duties under the several provisions of the said Acts, and by other persons in relation to the execution of the said Acts, which said oaths the Commissioners for special purposes and other Commissioners in the said Acts mentioned are respectively authorised to administer; and it is expedient to authorise her Majesty's Justices of the Peace in Ireland, as well as the said Commissioners, to administer the same: Be it enacted, That it shall be lawful for her Majesty's justices of the peace in Ireland respectively within their respective jurisdictions, and any one of them is hereby authorised and empowered, to administer to any such assessor or collector or to any other person any oath required or authorised by the said several Acts or any of them to be taken in any matter relating to the execution of the said Acts.

INQUIRY INTO THE INNS OF COURT.

WE are able to state, that so far from the proposed Commission of Inquiry, moved for and obtained by Mr. Napier, being viewed with disfavour by the Benchers of the Inns of Court,—who rank among their members many of the most eminent and distinguished men in the kingdom, both judicially and otherwise,—those gentlemen spontaneously declared their determination to afford every facility for inquiry. It is impossible, indeed, to suppose that these eminent persons could ever have had any motive whatever for concealment; and we doubt not that the result of the proposed inquiry will be such as to dissipate several absurd rumours to which currency has been given by interested and prejudiced individuals. Many of the Benchers have seats in the House of Commons; and, unless we are mistaken, every one of them was prepared, equally with the Attorney and Solicitor-General, to express his utmost readiness to co-operate with Parliament in devising a safe and expedient system for promoting the cause of legal education in conformity with the enlightened spirit of the age. Much has been already done in this direction, but not till after many difficulties, and various differ-

ences of opinion amongst highly competent and disinterested persons, had been overcome. We trust the proposed Commission will consist of gentlemen of prudence and experience, whose names will command the confidence of all branches of the Profession and the Public. Sir John Patteson, for instance, would be a host in himself. While we are on this subject, we may state, that we heard only this day, with the greatest pleasure, one of the most distinguished Benchers express the highest gratification at the announcement that the Law Institution, actuated by a spirit similar to that of those honourable and learned persons, intended to initiate a preliminary examination of candidates for admission to practise as Attorneys and Solicitors, as to their fitness generally in point of a liberal education.

THE NEW LAW COURTS.

THE STRAND v. THE FIELDS.

THE question of the precise locality of the New Courts still agitates the region of the Inns of Court and Chancery and the purlieus of Chancery Lane. We apprehend that the decision of the Government and the approval of the Public will depend, not merely upon the capability of adapting Lincoln's Inn Fields in aid of an *ornamental* structure, but on the *convenience* of the site and the *usefulness* of the building. It may be admitted, for the gratification of the trustees of the gardens (who seem anxious to commit a breach of trust), that a very attractive picture may be designed of a Grecian edifice, surrounded by verdant lawns, shady walks, and (in due time) lofty trees, with perchance an appropriate rookery! If Westminster Abbey, St. Paul's Cathedral, and our Metropolitan Colleges could be so surrounded, we should rejoice greatly; but, considering the business connected with the administration of justice in all the Courts of Law and Equity in the vast metropolis of this great empire, we opine that the site on the borders of the cities of London and Westminster is preferable to any other for the reasons which we have from time to time indicated, and some others to which we propose to advert.

We admit, in favour of "the Fields," that they are nearer to Gray's Inn than the Strand, but then, with the exception of Bedford Row (no doubt an important locality) there are neither lawyers nor law offices on the northern or western sides of the quad-

range. High Holborn, Great Queen Street, Drury Lane, and St. Giles's have not the honour of accommodating any legal or equitable functionaries.

On the other hand, the Strand site will be advantageous to, and indeed *unite*, the three great Inns of Court—Lincoln's Inn and the two Temples. The several Inns of Chancery will also be brought closely to the New Courts. So of Chancery Lane, Carey Street, Essex Street, and all the courts and avenues in that neighbourhood. The Strand site, also, is in a more conspicuous situation than that of the Fields, even when new streets may be constructed to afford the suitors an easy access to the much-lauded quietude and repose of that secluded region. To study the law and prepare for forensic contests, it may be desirable to exclude startling noises and alarming disturbance; though for "our poor parts," when earnestly engaged in legal researches or pursuits, we feel no interruption from the rapid roll of the carriages of the Lord Chancellor, or the Solicitor-General, or of the various vehicles which convey the hosts of barristers and solicitors, or their clients and witnesses, from the law district to the distant south-west corner of the metropolis where the Courts are now located. We hold, indeed, that the issue of *quietude* tendered by the "Old Law Reformer," is immaterial to the just decision of the case. We respectfully submit, that the Government ought not to be turned aside by the "babbling of green fields," or by idle talk of "hedge row elms and hillocks green." In this great city, we must provide for the demands of justice to its millions of inhabitants, and consult their interest and convenience, and not the taste and personal feeling of any inconsiderable body of men, however respectable.

It has been said, with regard to several of the owners of property in the Fields that they look only at the enhancement of the value of their property. They are, no doubt, entitled to be heard, but on a great public question, affecting the whole community, it is evident that individual interests must give way. It ought, however, to be a consolation to these householders that they will largely participate in the benefit of concentrating the Courts and offices in their neighbourhood, although possibly not to the same extent as if the edifice were built in the centre of their garden.

CHARITY COMMISSION.

FIRST REPORT.

WE, the Charity Commissioners for England and Wales are required by the provisions of "The Charitable Trusts' Act, 1853," to make a report to your Majesty of our proceedings up to the 31st day of December last.

Our appointments, which your Majesty was pleased to make on the 22nd day of October last, enabled us to enter immediately upon the discharge of our functions, but numerous arrangements for the construction of our official establishment and the distribution of its duties occupied a considerable time, and we could not obtain more than a very limited efficiency for the active purposes of our commission before the month of December. The present report of our proceedings is therefore confined to a very short period.

We applied ourselves at once to making the provisions and requirements of the Act which we considered to be of particular importance efficiently and extensively known, and besides advertising in the *Gazette*, we distributed about 15,000 circulars for that purpose.

Before the end of March next we have to expect, in compliance with the provisions of the Act, returns of the revenues and of the receipts and expenditure of the body of charities in England and Wales, probably amounting to not less than 40,000 in number.

It has appeared to us that we could not usefully or effectively attempt to enter upon an indiscriminate and unsolicited interference in the affairs of this vast number of charities, but that we should best discharge our duty by directing our attention to cases brought to our notice by particular application, or respecting which we have possessed any special information, awaiting in other cases the returns referred to for our future and principal guidance. It is by comparing the accounts with the documents which constitute and explain the endowment that we hope to be able to ascertain, to a considerable extent, in what cases and in what manner it may be our duty to interfere.

Previously, however, to the 31st December last, application had already been made to us for assistance or advice, in 340 cases, which have engaged us in a large correspondence, and these applications are daily increasing in number.

We have made some minutes, in obedience to the directions of the Act, for our own guidance and that of our inspectors (which will be found in an Appendix), but they may probably require to be extended when the practical details of our duties have more fully developed themselves.

We have also drawn up and placed in the Appendix some general regulations and printed forms of application to the board for the guidance of applicants, which will be supplied to any persons desirous of making use of them. These forms are necessarily experimental, and are yet to be applied in working the entirely

new jurisdiction created by the Act. They may also, therefore, possibly require future additions and alterations. But in their present shape we trust they will give facilities to all persons who may desire to take advantage of the Act.

Given under our hands the 14th day of February, 1854.

(Signed)

P. ERLE,
JAMES HILL,
RD. JONES.

COURSE OF PROCEEDING.

The Report is followed by general minutes relating to the proceedings of the Commissioners and their Inspectors, viz. :—

1. The Commissioners attending daily at their office for the despatch of business will sit as a board as often as occasion shall require, and, notwithstanding any adjournment, will resume their sittings when necessary.

2. All communications, papers, and documents addressed or sent to the Commissioners or their secretary shall be forthwith registered, and laid before the board.

3. A separate register shall be kept of all deeds, muniments, or documents relating to charities which may be deposited with the board.

4. Registers shall be kept of all letters, instruments, and documents sent from the office.

5. A summary or breviat shall be made, and kept in the office, of the proceedings in every matter brought under the consideration of the Commissioners.

6. The seal of the Commissioners shall not be affixed to any document except at a sitting of the board.

7. As a general rule, the board will require applications with reference to any charity to be made in writing, and signed by the applicants; but the board, without any precedent application to them, will institute inquiries and exercise their powers with respect to any charity where it shall appear to them expedient to do so.

8. As a general rule, applications will be proceeded with in the order in which they are received, except where the board shall (in cases of urgency or for any special reason) think fit to depart from this rule.

9. All official correspondence shall be carried on in the name of the secretary.

10. Examinations and inquiries shall be conducted, as far as may be found practicable, by correspondence at the office of the Commissioners, or by personal communications there made.

11. Every case in which local examination and inquiry shall be requisite shall be referred by the board to an inspector.

12. Upon every such reference a copy of the minute of the board relating thereto, signed by the secretary, shall be delivered to the inspector to whom the reference is made, and such copy shall be his authority for prosecuting the examination and inquiry thereby directed.

13. Every such examination and inquiry shall be made with such public and particular notices, and according to such general conditions as the board may prescribe, and, subject thereto, in such manner as the inspector, bearing in mind that the object is to ensure the most just and beneficial application of the charity, shall think fit.

14. The general mode of conducting the examination and inquiry will be left to the judgment and discretion of the inspector, who shall be at liberty to avail himself of all such evidence and information as he may be able to obtain, and to exercise for that purpose all the available powers of the Act, except where the board shall have prescribed any particular limitation of the inquiry or of the exercise of such powers.

15. The inspector shall report to the board the result of every such examination and inquiry, and shall in his report mention the nature of the evidence and information obtained by him, and whether taken on oath or not.

REGULATIONS.

The following are the Regulations and Instructions concerning applications to the Board:—

I.—Applications for Inquiry or Relief respecting any Charity.

1. Any person or persons having reasonable grounds may apply to the board for inquiry or relief with respect to any charity.

2. The application should be in writing, addressed to the Commissioners, and signed by applicants, who should add their respective professions, occupations or qualities, and residences.

3. No precise form is necessary; but the usual designation of the charity, and the name of the parish, township, or place for the benefit whereof the charity was founded, or in which it is administered, and the names, professions, or occupations, and residences of the trustees, or persons acting in the management or administration, should be stated in all cases. Such facts and circumstances as will sufficiently explain the nature and object of the application should also be stated.

4. A separate application should be made for each charity, except where several charities are administered together under one scheme or system of management.

5. On receipt of an application, the board will make such inquiries and adopt such proceedings as the case may require.

II.—Inquiries to be instituted by the Board.

1. When an examination and inquiry into any charity is considered necessary, the board will communicate with the trustees or other persons capable of giving the required information.

III.—Applications for the Opinion, Advice, or Direction of the Board.

1. An application may be made by any

trustee, or other person having any concern in the management or administration of any charity, for the opinion, advice, or direction of the board, in the matter of the trust.

2. Every such application should contain concise statements, and, as far as conveniently may be, in numbered paragraphs, of all the material facts and circumstances, upon which the opinion, advice, or direction of the board is desired.

3. It should be stated whether the application is made with the concurrence of all the trustees or persons concerned in the management or administration of the charity, or with the dissent of any and what proportion of them.

4. The application should be accompanied by any documentary evidence which will explain or substantiate the statements.

5. The board may require the statements to be explained and altered, in point of form, in such manner and as often as may be thought necessary.

6. The board may also, at any time, require the statements to be verified by the statutory declaration of the applicants or any of them.

7. On the application being approved, a duplicate will generally be required to be sent, which will be returned to the applicant with the opinion, advice, or direction of the board appended thereto, and the original application will be retained by the board and registered.

IV.—Applications for an Order or Certificate of the Board authorising the institution of any Suit or other Proceeding before any Court or Judge.

1. Any person applying for an order or certificate of the Board authorising the institution of any suit or other proceeding before any Court or Judge, should transmit to the board a notice and statement in writing, setting forth whether or not he is a trustee or person administering or claiming to administer, or interested in the charity, or an inhabitant of the parish or place within which the charity is administered or applied; the amount of the gross annual income of the charity; and all the other material facts and circumstances of the case; and explaining the nature and objects of the proposed suit or other proceeding.

2. The facts and circumstances should be stated in numbered paragraphs, as far as conveniently may be.

3. Where the object of the proposed proceeding is the removal of trustees, their names, descriptions, and residences, and the reasons for their proposed removal, should be stated.

4. The names, descriptions, and residences of the trustees proposed to be appointed should also be stated.

5. Where the object of the proposed proceeding is a new scheme, the notice and statement should contain information as to the past administration of the charity, and its results, and the nature and provisions of the proposed scheme.

6. In proposing schemes care should be taken to deviate as little as possible from the original purposes and intentions of the founder.

7. The board may require the statement to be explained and altered in point of form in such manner and as often as may be thought fit.

8. The board may also require the statement to be verified by statutory declaration or otherwise.

9. Where the proposed proceeding is to be taken under the special jurisdiction created by the Act, for the establishment or alteration of a scheme or the appointment or removal of any trustee, notice must be given in the mode which will be directed by the board.

10. When the board shall have been satisfied that the proposed proceeding is proper, and that any required notice has been duly given, the requisite order or certificate will be issued to the applicant, or to such other person as may be approved.

V.—Applications for the Authority of the Board to grant building, repairing, improving, mining, or other Leases, or to cut timber, or make roads or other improvements.

1. Applications for the authority of the board to grant building, repairing, improving, mining, or other leases, or to cut timber, or make roads or other improvements, can only be made by the trustees or persons acting in the administration or management of any charity or the estates or property thereof.

VI.—Applications for the Authority of the Board to effect Sales or Exchanges.

1. Applications for the authority of the board to effect sales or exchanges can only be made by trustees or persons acting in the administration of any charity.

Forms for the several purposes above-mentioned are given in the Appendix to the Report.

CONSOLIDATION OF THE STATUTE AND COMMON LAW.

THE OPINIONS OF THE JUDGES.

THE Lord Chancellor having sent the Criminal Law Bills of last Session to the Judges, and requested them to make any suggestions which might occur to them as deserving of attention, all the Judges, except Lord Campbell, have returned answers abounding in learned criticisms. The Bills were prepared in accordance with the Commissioners' Report,—one of them was introduced by Lord St. Leonards, when Lord Chancellor, and underwent the examination of a Select Committee,—and the other by the present Chancellor.

We shall, in the first place, select the answers given by the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer. The answer of the former is as follows:—

“My Lord,—I have the honour to acknow-

ledge the receipt of two bills upon the subject of the Criminal Law, and of a copy of a circular addressed by your Lordship to the Judges on the 15th Dec., in which you desire to learn from the Judges, whether, looking to these bills, and particularly to the first, they consider that the bringing the whole Criminal Law (so far as relates to offences and their punishment) into one or more Statute or Statutes, taking the first bill as a fair specimen, or nearly a fair specimen, of the degree of precision and accuracy which it would be possible to attain,—would be a measure likely to produce benefit in the administration of the criminal justice or the reverse; and also their opinion as to the expediency of making any of the partial alterations of the existing law which are recommended by the Commissioners, and embodied in these Bills.

“Your Lordship's first inquiry refers to the expediency of having a code of the Criminal Law, and to the practicability of framing such a code, taking the Bill No. 1, as a fair specimen of the accuracy with which the work might be performed. I have always thought that if a code of the whole Criminal Law could be framed, and having been framed were allowed to remain the unaltered law, it would facilitate the administration of criminal justice; but I believe that it is practically impossible to frame and carry such a measure through Parliament, and I am satisfied that if it were carried the law would be altered after two or three sessions, and the code would thus become imperfect. A careful perusal of the draft bill sent, and particularly of No. 1, which your Lordship says is a fair specimen, or nearly a fair specimen, of the degree of accuracy and precision which it would be possible to attain, has not tended to relieve my difficulties in this respect. I see, or fancy I see, in Bill No. 1, many inaccuracies and some absurdities, which, if it passes in its present form, will lead to great confusion. Seeing, however, that this bill ‘has been very attentively considered by a committee of the House of Lords, consisting not only of all the Law Lords, but also of many other peers who took a deep interest in the question, and has been made, in the ‘opinion of the committee, as perfect in its main features as it could be made,’ I am induced to distrust my own judgment, and to doubt whether I have taken a correct view of the subject. It must, however, be remembered, that the Act would be to be construed by the magistracy of the country; and if I have been embarrassed, it is not impossible that some justices may not take a clearer view of the provisions in question. I do not purpose to enter into a detailed examination of each clause, but I will take the three first clauses relating to assault,—a most common subject,—to illustrate what I mean.

“By section 1, after the passing of the Act there are to be no offences against the person not included in this or some other unrevoked Statute; and, unless I am greatly mistaken, if a man knock another down, doing him no bodily harm, he will not, after the passing of

this Act, be liable to prosecution or punishment.

"By section 134, whosoever shall assault any other person shall incur the penalties of imprisonment, &c.; but does this section and the word assault apply to the case put? I think not. The code defines the meaning of technical words used, and the previous section (133) says that an assault *CONSISTS* in any attempt or offer, or in any menace by gestures, unlawfully to cause any bodily harm or unlawfully to do any personal violence to another, by one who has present ability to cause such harm or to do such violence. It is manifest that this definition does not meet the case put, and the only way to bring it within the Statute is to say that the word assault means something more than the definition ascribes to it; but if it be competent to add to the definition of the word assault as contained in section 133, the definition might with propriety have been entirely omitted, for it is quite as notorious that the word assault in the Criminal Law comprehends a constructive assault, which is defined as an actual assault, which is entirely omitted; in fact, the draughtsman has taken the definition of a constructive assault only, and has said that an assault should consist of that definition, instead of defining an actual assault, and adding that the word should include a constructive assault as defined; but if there is a possible immunity to persons committing common assaults, the next section makes ample amends, in the protection of females. By section 135, whoever shall indecently assault or touch any other person shall incur the penalties of imprisonment, &c. If the Act passes, therefore, any person who indecently touches any female may be imprisoned for two years. The indecency of the touch does not depend upon the consent of the woman. Whether lawful or unlawful, the indecency of the touch constitutes the crime; and as this indecency is likely to be aggravated in proportion as the woman consents, the more willing she is the more aggravated will be the offence. After the ordeal through which the Bill has passed, I do not of course bind myself to the construction which I have pointed out, without full argument and further consideration; but I think I have shown enough, upon a very common subject, to justify me in saying that such a measure, if Bill No. 1 is to be taken as a fair specimen of the accuracy with which the work might be performed, would produce no benefit in the administration of criminal justice.

"But I do not think that the manner in which these Bills have been prepared can afford a fair specimen of a code of the Criminal Law. What is wanted is a code of the whole Law,—not of parts of it. It is very convenient for the draughtsmen to select subjects which require codification less than any others, and which are comparatively easy, as specimens of what may be done upon the law at large; but when we remember that all the Statutes relating

to offences against property were consolidated by Sir Robert Peel, and that the few legal maxims applicable to these subjects are collected and clearly explained in Archbold's and Roscoe's works on the Criminal Law, it is manifest that codes upon these subjects are at best but imperfect specimens of the way in which codes could be prepared upon the Law of Treason; or with respect to offences against the Queen and her government; or against Religion; or against public justice; or against the public peace; or against public trade; or against the public health; or against public police and economy,—and such like subjects. The two subjects selected are simple in themselves, and present few great questions which would provoke discussion. Perhaps the punishment of death and the general subject of secondary punishments might be discussed in the progress of such Bills through Parliament; but touch the subjects to which I have adverted,—treason, offences against religion, and the like,—and you provoke endless and bitter discussion, which would not only impede the passage of any measure upon such subjects, but would disturb that calm deliberation which alone is fitted to such occasions, and without which it would be useless to attempt to frame and pass a criminal code through Parliament.

"It remains only for me to state, in answer to your Lordship's last inquiry, that I approve generally of the proposed modifications of the Law as suggested by the Commissioners and embodied in these Bills."

The Lord Chief Baron thus replied:—

"My Lord,—Your Lordship's communication of September last (accompanied by two Bills to consolidate and amend the Criminal Law) was acknowledged by me at the time. I have now the honour to reply to your letter of the 15th December, 1853, 'requesting me to make any observations on the subject of the Bills which the perusal of them may suggest.'

"The first section of the Bill No. 2, is in substance a repeal of the Common Law of England in respect of those matters to which the Bill relates. I think this is quite uncalled for, inexpedient, and probably would prove mischievous. I am not aware that there is any such doubt in point of law as to the offences referred to, as to call for the interposition of the Legislature at all; but I feel very confident that an attempt to reduce all such offences within the verbal descriptions of a new code would create very, very much more doubt than now exists, in proportion as the meaning of language is much more uncertain than the decisions of law. Every person (of any experience in these matters) is aware that any considerable change in the law is always followed by litigation and expense, which continues until the doubts are exhausted by judicial decisions to which the new law has given rise. The proposed Bills would, in my opinion, furnish great room for doubt and uncertainty, which at present does not exist, and so far would be mischievous; and the abolition of

the common law (a very serious and grave matter) might be productive of very dangerous consequences. I have no such confidence in the sagacity of any man or set of men as to expect that every possibility can be anticipated, and every contingency be provided for. Under the protection of the common law (aided by such Statutes as have been passed in *furtherance* of it), I know that the peace of society and the safety of individuals is amply provided for; but I cannot feel the same security if the common law be abolished, and we have nothing to look to but a code. Before so important a measure be passed as the abolition of the common law in respect to the matters in the two Bills (and especially if this be but a step to the abolition of it altogether), I would venture to suggest the propriety of having the opinions of the Judges taken in an authoritative manner, either under the sanction of the Crown or by the House of Lords, as was done in a case where some doubt arose as to what degree of insanity justified a verdict of not guilty.

"I attach no importance to my own opinion; but I think the unanimous opinion of all the Judges would be entitled to some weight, and I think they would be unanimous on this point.

"With respect to the subordinate matters, I entirely approve of section 30 in Bill No. 2. I think it might be advisable to give a power to punish certain common law offences with hard labour as well as mere imprisonment. Many of the proposed amendments are at present unnecessary. I am not prepared to dissent from any of them.

"As to the other Bill, in my judgment it would be unwise and inexpedient to adopt such a measure. To borrow a phrase applied on another occasion, it would turn out to be 'much more fertile in raising doubts, than happy in resolving them.'"

Next we extract some passages from the answers of Mr. Justice Talfourd:—

"Your Lordship has authorised me to consider this Bill as 'a fair specimen of the degree of precision and accuracy which it would be possible to attain' in the accomplishment of the desired object; and the justice of such direction is manifest from the facts stated by your Lordship, that this Bill was introduced into Parliament by Lord St. Leonards, as a Government measure, founded on the reports of the Criminal Law Commission; 'that its enactments are for the most part identical with those of the Bill framed by the Commissioners;' that 'this Bill was very attentively considered by a Committee of the House of Lords, consisting, not only of the Law Lords, but also of many other Peers who took an interest in the question, and that some few clauses were left for future consideration, but in its main features this Bill was made as perfect as in the Committee it could be made.' If such a Bill, so framed, so introduced, so corrected, so nearly perfected, so justly exhibited as a fair specimen of the precision and accuracy it is

possible to attain, should be found, from first to last, deficient in all the qualities which should attend a comprehensive system of Law, the result may assist us in determining the question whether it is expedient to prosecute a scheme of codification of which such a specimen has been produced under such auspices.

"I proceed, therefore, to the examination of this Bill, thus justly presented as a specimen of the process by which it is proposed to repeal the Criminal Law of England, written and unwritten, in order to the substitution of a series of Statutes.

"The title of the Bill is startling to the apprehension of one who understands it to be the first part of a systematic digest of the most important of all human laws,—defining crime and awarding punishment,—and is prepared to expect a corresponding accuracy of language. He reads, 'An Act to consolidate and amend the Criminal Law of England, so far as relates,' and pausing at the third line asks, '*what relates?*' Will the framers of the Bill show their fitness to legislate for a people by leaving a verb with nothing to govern it? He supplies '*it*,' and proceeds, '*as it relates to incapacity to commit offences, duress, criminal agency and participation, and homicide, and other offences against the person,*' and is puzzled by the new phraseology adopted to describe the existing laws about to be displaced. 'Criminal intention' indeed is sufficiently intelligible, though the word of art, always hitherto used in Statutes, is '*intent*.' 'Duress,' though having only rare and accidental association with the general principles of Criminal Law, is also intelligible. 'Criminal agency' has hitherto been involved in the old outworn phrase of 'principal and accessory;' but what is meant by 'participation?' Without the adjunct '*Criminal*,' it is senseless; and as this adjective has been first applied to 'Intention,' and has been repeated before 'agency,' it is not certain that its repetition is meant to extend to 'participation;' but if it is so meant, then the reader asks, what does 'criminal participation' mean? Does it describe some guilt distinct in character or circumstances from that of the actual perpetrator of a crime, or does it include him? If it denotes some criminality apart from actual commission, he would guess that it is meant to designate the guilt of participation in the *fruits* of a crime, as distinguished from a share in its contrivance or its commission. Is it necessary, in order to give fit expression to the laudable desire for reforming the Law, to abstain from calling things by their ancient names in the title of an Act framed to displace them?

"It seems reasonable to expect accuracy and precision in the preamble of a Bill, which is usually short, and from which light should be cast on the provisions that follow, and more especially in a preamble which professes, not only to state the purpose of the Bill, but to introduce other Bills, which it prophesies that the same Parliament, or some future Parlia-

ment, will pass; but I should have been unable to annex any meaning to some portions of this preamble, unless I had been assisted by light reflected on *them* from the subsequent clauses. It begins, 'Whereas it is expedient to consolidate and amend the existing Laws relating to indictable offences by a series of Acts of Parliament to be passed for that purpose.' Thus far the preamble is intelligible, though whether it is a legitimate course for the Legislature, when passing one Act, to assume that other Acts will be passed, may be doubtful, and there is no doubt that the words 'to be passed for that purpose' are superfluous. But the preamble proceeds 'And it is expedient, in the first place, *as applicable* to the whole body of the Law relating to such offences by this and future Acts intended to be consolidated and amended, and *as the first branch of particular subjects*, to consolidate and amend, and for that purpose to repeal, the existing laws relating to incapacity to commit offences, duress, criminal agency and participation, and the definition and punishment of homicide and other offences against the person.' In endeavouring to pierce this remarkable maze of words, I first find, 'as applicable,' and ask *what* is the relation of 'applicable?' The words follow a declaration that it is expedient to do something. What is the thing to be understood? This thing, whatever it may be, is to be 'applicable to the whole body of law relating to *such* offences by this and future Acts *intended* to be consolidated and amended.' Expression sufficiently clumsy, though capable of meaning; but still I ask, where, before or after, is to be found the *thing* which it is expedient to do 'as applicable?' I presume I am to look for it in the whole or a portion of the entire sentence after 'subjects;' but surely this is beyond all statutable violence previously committed in language. But if this violence may be allowed, what is the meaning of, 'and as the first branch of particular subjects?' From what root does this 'branch' spring? What verb governs it, or what verb does it govern? Why does it dangle and flutter in the midst of the sentence, without antecedent or consequence? And what is it in itself? What can be meant by a branch of *subjects*? Either a branch of a subject, or a class of *subjects*, is an intelligible phrase; but a 'branch of subjects' is not capable of shape to the mind's eye; neither is there any sense in the word 'particular,' as applied in this place to 'subjects.'

"The purpose is then stated in rather a peculiar mode, 'to consolidate and amend, and for that purpose to *repeal*, the existing law.' I can understand that a purpose of consolidating and amending Laws, consisting, as the laws in question do, of written statutes and unwritten maxims and rules, may be intelligibly expressed by stating that, for the purpose of consolidating and amending the laws, it is expedient to repeal certain Statutes or to annul certain rules; but to speak of repealing the entire law itself, in order to *its* consolidation and amendment, is something like a contradiction in terms.

"The description of the laws to be repealed is subject to the remarks I have made on the title of the Bill; but, in addition to these, another observation arises by reason of the preamble not following the title in simply speaking of the laws 'relating to homicide,' but describing them as relating to 'the *definition* and punishment of homicide,' by which attempt at precision it omits the main object of its clauses,—the ascertainment of the cases in which homicide shall be treated as an offence, and the degrees of guilt it may involve.

"Exploring this preamble with the aid of the subsequent clauses, I understand it, in substance, to recite, that it is expedient to repeal and re-construct the whole Criminal Law by a series of Statutes embracing both those rules and maxims which are generally applicable to all offences, and also the Common and Statute Law relating to particular crimes; and that, in pursuance of that design, it is also expedient, in the first place, at once to re-construct the laws which relate to 'incapacity,' &c., and also to re-construct the laws relating to offences against the person, and to proceed thus far in one Statute. With the larger proposition I do not propose, at present, to deal; but, assuming the principle it involves to be just, I see no reason for thus associating the general considerations which affect all classes of crime with the details of law affecting a single class; and I venture to suggest, that both symmetry and convenience would be better consulted by including all the matters of general consideration in one Statute, and including offences against the person in another enactment by themselves, as is proposed in the class of larcenies. If it had been proposed to bring the entire Criminal Law within a single Statute, the objection would not arise; but as this course is not proposed, I do not perceive the expediency of the partial union now contemplated between general principles and one class of crimes. It is true that by that union a larger instalment of change will be accorded than could be given by either Statute singly passed; but that evil may be obviated by dividing the present Bill into two bills, which might proceed *pari passu*, and become Acts on the same day.

"The first section of the Act raises the most serious objection which I feel to its principle. Having repealed various scheduled Statutes, it enacts, that 'no person shall be liable to prosecution by any indictment or any criminal information in the name of the Queen in respect of any offence against the person not included in this Act, or some Act not hereby repealed, or some Act to be passed after the passing of this Act.' Such a clause, which ostentatiously offers impunity to any one who will discover a crime which has escaped the knowledge or the prescience of the framers of the Act, can only be justified by their assured conviction that they have suffered no mode of indictable crime to escape their research, and that they are able to anticipate all modes of crime which future ingenuity may shape. This noble daring might

be applied to *felonies*, with no danger except that of imperfect substitution of the proposed law for the existing law, because a new felony cannot arise except created by a new Statute; but new forms of *misdemeanour* have repeatedly arisen, and have been punished by the application of the general principles of the Common Law. Within living memory, forms of wrong, either singly adopted or devised in conspiracy, have been found criminally to impugn the rules of the unwritten law, and by the application of the principles of that law have been subjected to punishment, because those rules, not professing to define every mode of delinquency, are capable of just adaptation to the changing aspects of society,—to the new temptations which arise from new circumstances,—to the new modes of injury which new duties and new descriptions of property suggest, or to the new devices of evil which ancient wickedness may shape. To substitute for those rules—well ascertained in themselves, though of flexible application—the inflexible language of a Statute, and to proclaim impunity to an evil doer whose offence may be untouched by that language, is a measure so obviously perilous as to require some great advantages of precision and certainty to compensate for its dangers.

“By the second section it is proposed to enact that—

“‘No person shall be indicted or prosecuted as a principal in the second degree, or as an accessory before or after the fact; and for the purpose of describing the different degrees of guilt such distinction shall cease to exist.’ With a proviso retaining the law affecting receivers.

“This seems to me a strange attempt, by positive enactment, to provide that distinction in guilt shall be confounded in language; but, so far as the clause applies to principals in the second degree (who might always be indicted as principals) and accessories before the fact, no practical objection arises from it, because the guilt of aiders and abettors, and of accessories before the fact, and that of the principals in the first degree, is of the same dye, and the punishment of all is the same. But the case of accessories after the fact is affected by entirely different considerations; their guilt has no analogy to that of the principals; their offence is simply an offence against public justice, and is followed by entirely different penal consequences. Why, therefore, in such a case, are the distinctions of guilt to be elaborately obliterated from its solemn description? and why should juries be perplexed by being sworn to try a man for committing a crime who is really charged only with affording shelter to its perpetrator when the crime was irrevocably completed? It is impossible to conceive a greater distinction in the essence of crime than that which by this section it is proposed to annihilate in language; but, beyond this, the Bill itself condemns this studied barbarism, by making, in section 42, the guilt of accessories after the fact (that is, all that remains of such

guilt after excepting the case of receivers), a substantive offence punishable by appropriate penalties, and by providing, in section 43, for a trial of the accessory apart from that of the principal. How are these two sections to work? Is a man charged with harbouring a murderer to be tried for murder under the 2nd section, or for the offence of harbouring him defined by the 42nd? If indicted under the 42nd, may he object, that although the clause creates the offence and assigns the punishment, his guilt amounts to that of an accessory after the fact to a murder, and that the 2nd section has expressly prohibited a charge so made according to the truth of the fact, because it has provided that he shall be indicted as a murderer? For what good purpose a distinction so great as that between a principal felon and an accessory after the fact should be confounded on the record, while widely disconnected in punishment, I am unable to conjecture, as any existing inconvenience is removed by providing for a separate trial of the accessory, and by making his guilt an independent crime.”

The learned Judge then proceeds to comment upon many of the sections in detail;—and, on the subject of punishments and the proposed code of the unwritten Law, thus remarks:—

“The manner in which punishments are assigned to offences throughout the Statute seems to me to involve recurring peculiarities of grammar, and some danger as to the validity of judicial sentences. Instead of stating, as was usual, that the party convicted shall be liable to be transported or imprisoned, at the discretion of the Court, its phraseology is, ‘shall incur the penalties of transportation, &c., or of imprisonment,’ except when *fine* is mentioned, and then the words ‘at discretion’ are introduced. Whatever may be the proper force of the word ‘incur,’ it is impossible that the plural ‘penalties’ and the alternative particle ‘or’ can both be accurate; and if the old mode of expressing penal liabilities must give place to a new one, and it is desired to retain the word ‘incur,’ it should be followed by the singular penalty of, &c., or of, &c., and then should be added, ‘at the discretion of the Court before which the offender shall be convicted.’

“In awarding the punishments of death the Bill always adds the mode, and rather strangely puts it under a videlicet. I would submit that it would be better taste to introduce the mode of execution once, and merely to refer to it afterwards; especially as there is an interpretation clause for the saving of words.

Having submitted the considerations which have most forcibly struck me in the perusal of this Bill, I need scarcely express my opinion that it is not expedient to bring the whole Criminal Law into one or more Statute or Statutes; for if a Bill framed under the auspices which have attended the present is liable to such objections as I have ventured to

suggest, it may well be inferred that the complete accomplishment of the work proposed is hopeless, and the attempt to accomplish it perilous.

"To reduce the *Statute Law* into a narrow compass is an object entirely free from objection, and which, if accomplished with care, can produce nothing but good; but to reduce unwritten Law to Statute is to discard one of the greatest blessings we have for ages enjoyed in rules capable of flexible application.

"I do not think any greater certainty will be attained by a code of the unwritten law, to compensate for the loss; but that, on the contrary, new questions of the construction of the words of the same Statutes will arise, unforeseen difficulties in construction would be suggested, and new decisions, more unsatisfactory than those which expound and apply principles, would become necessary. How little the utmost learning and care which can be bestowed in framing a Statute may avail to prevent a number of questions from arising in its language may be gathered from the example of the Statute of Frauds, which, framed by one of the greatest lawyers who ever lived, has been the subject of almost numberless decisions."

CONSTRUCTION OF STATUTES.

EQUITY JURISDICTION IMPROVEMENT ACT. —PRODUCTION OF DOCUMENTS.—PROOF OF PLAINTIFF'S POSSESSION.

THE defendants to a bill, seeking to set aside certain deeds as obtained by misrepresentation, and referring to some deeds and documents as being in the plaintiff's own possession, moved under the 15 & 16 Vict. c. 86, s. 20, for the production of all documents in the plaintiff's possession or power relating to the matters in question in the suit, but without any affidavit in support. The Vice-Chancellor *Stuart*, in refusing the motion with costs, said,—"I do not think that the Court ought, under this Act, in such a case as this to make an order in general terms for the production of all documents in the possession of the plaintiff, analogous to that which is contained in a decree. The Court is to exercise a discretion. The order may be to produce all the documents, and yet it may turn out that all ought not to be produced. The documents sought to be produced should appear upon the notice of motion, so that with reasonable certainty the Court may know what documents are required to be produced. It seems to me that the recent Act ought not, according to a reasonable construction, to be held to sanction an application of this kind. There is no evi-

dence that the plaintiff has a single document in his possession." *Floft v. Mullins*, 1 Smale & Giffard, 1.

LIMITED LIABILITY PARTNERSHIPS.

WE recently noticed the treatise of Mr. Edwin Field on limited liability partnerships, but were then able only to describe its general scope, and to set forth the heads of its contents. The subject has become more and more interesting to the Public and the Profession. We therefore resume our review of Mr. Field's work, and would particularly call the attention of our readers to the effects of the present state of the law.

Mr. Field maintains that our system of mercantile law excludes the investment of *cheap capital*:—

"The Commissioners' questions first seem to me to ignore this most important economical consideration, viz.,—that there are capitals of all sorts—cheap capitals and dear capitals. According to the risk of the investment, so must the return of the capital invested be. Capitalists are all engaged in the public service, employing their capital to procure something the public need requires; and they must, in the long run, be paid a return according to the risk, and this return added to the capital, in the long run, determines the price. The temporary qualifications arising from competition, or the varying relations of supply and demand, may be put out of sight, because they are only temporary. Now of course the public is interested that all capital engaged in its service (as all capital is engaged if it is making any return at all) should be as cheap capital as can be induced to enter into it. All laws for giving security and certainty to the rights of property and capital, are mainly valuable to the public in their effect in making capital cheaper and more easily accessible to public use. Assume that the public were to insist on needlessly jeopardising all such capital,—of course it would greatly increase the price at which capital would alone be invested for its use, and would, further, drive large masses of capital to other countries, or under other laws where wiser rules prevailed.

"Now our law, in virtually prohibiting limited liability companies, does precisely what my hypothesis supposes. Very many large undertakings can only be carried on by large companies gathering capital from so many sources that it becomes very large. If Rothschilds were as plentiful as shopkeepers, it would be otherwise. The number of individuals who have very large capitals is small, and of these very few indeed will embark it in trade; they prefer lending it out in small driplets, to very many borrowers (for such is the upshot of most investments), contenting

themselves with low returns, but not putting too much into one boat. Such large capitals can only be got together, for working purposes, by combination—that is by companies. By saying that all such combinations shall be on the unlimited liability principle, the law interposes an obstacle of risk which at once makes all capitalists embarking require great returns—which in other words excludes the public from the benefit of cheap capital in these undertakings."

He next considers the effect which the prohibition of limited partnership has in creating *middle-men* :—

"No doubt if we could trace the capital employed in all kinds of joint-stock companies to its source, we should find it came from the same fountain-head to both limited and unlimited companies. But in the case of the latter, it goes through many middle-men, who have to take their profit for mixing themselves up in its distribution; and this profit, as well as the compensation for the great risk, has to be all paid by the public, in the price of the article produced; while in the case of the former, the capitalist himself will be the shareholder and partner, without the interference of middle-men. The middle-men are bankers, bill-brokers, merchants, and others who live on diffusing (virtually on *del credere* commission) capital, from the cautious lender to the most wildly speculative borrower."

Its effect on overstocking some trades, is then pointed out :—

"The effect of a law of this sort in artificially diverting capital from occupations which can only be carried on at great risk (because only by joint-stock companies, and they by compulsion, all being unlimited in their liability) is a subject of much interest, and seems to be one to which, with its converse, the Commissioners' questions should have been eminently directed. The converse would be, how far there are now large classes of occupation wanting *great* capitals; and which (from the competition of other countries having other laws of partnership, and therefore employing cheap capital in them) can only be carried on by cheap capital here; but which classes of occupation are by our unwise restrictions on limited partnership starved out of England."

The mischief of the prohibition of limited partnerships, in creating *real partners* into *nominal creditors* is thus described :—

"Further and serious omissions in the Commissioners' questions seem to me to have been made, in so far as the iniquities arising under our laws from the position of family creditors in case of failure are not probed to the bottom. A trader must have capital; his relations cannot be partners without pledging all they possess as a guarantee for his integrity, prudence, and success. On these considerations they lend him capital; and so become, for all econo-

mic purposes, partners—the very founders, indeed, of the trade. They take secret mortgages on the works—perhaps get exorbitant interest (if through discount of bills, or in other ready ways, legally), and then, when the failure comes, they sweep off a large part of the assets under their securities; and actually are allowed to rank as creditors for the rest—*pari passu* with those who have become such in the ordinary course of trade. Under a system of limited liability, it is very certain a much honester state of things must generally arise between them; our family creditor would be a limited liability partner. Why very certain? Because when trades are started, people do not look to a disastrous result. All their expectations are of profit—and, at that time, all mean to act honestly and fairly. But as soon as prospects are louring, the friendly family creditor has the earliest intelligence, and is secured."

We conclude, for the present, with Mr. Field's observations on the *conflict* of the prohibition with the laws of *other countries* :—

"I come now to a class of considerations also full of legal and economical interest and moment, and yet omitted entirely in the Commissioners' questions, and, I think, by all others who have treated on this subject—the mischiefs our present law creates by its conflict with the laws of other countries. The natural tendency of the law-merchant of all countries to assimilate, and the importance of such assimilation, has of late been a subject of much consideration, and may be here assumed. Limited liability partnerships are now permitted in France,—by most of the European nations,—in America, and Canada, and over almost all the commercial world, except these kingdoms, and in some of our other colonial possessions. The application of capital through the medium of limited liability combination is an object of universal desire. No new company will willingly establish itself on an unlimited basis if it can get limitation (a fact sufficient alone, I should have thought, to decide the whole case). Houses of commerce now exist in great numbers, with branches in all countries; and it need hardly be said if English capital, about to be directed to any given undertaking, can get limited liability by adopting a foreign domicile, that state of things will assuredly exist. In other words, a trade really English, the capital almost altogether English, the partners English, will adopt a nominal domicile abroad to escape the deprecated restrictions of our law. The fugitiveness of capital as to its place of application, and the electric rapidity with which it transports itself over the entire globe from domicile to domicile, is a phenomenon of commercial science quite as wonderful as any that natural science can produce. The extent to which, in pursuance of the vital law of its existence, it has gone elsewhere to obtain a limitation of liability for its owners, is one of the

most interesting statistical inquiries which could be conducted, and eminently one to which a Government should direct its agents."

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

[For the previous Lists, see pp. 106, 161, 238, 301. These Lists contain many names which have not yet appeared in the *Gazette*.]

Bell, Charles, 36, Bedford Row.
Benbow, John Henry, 1, Stone Buildings.
Bennett, John Thomas, 18, Doughty Street.
Blackman, William, 1, Raymond Buildings.
Blake, Charles, 49, Fleet Street.
Bridges, John, 23, Red Lion Square.
Burnell, William, 47, Parliament Street.
Burnett, Wm. Hope Whitley, 5, Serjeants' Inn.

Clarke, Henry Booth, 14, Serjeants' Inn.
Cole, Richard John, 12, Furnival's Inn.
Corpe, George, 3, Lincoln's Inn Fields.
Edwards, Henry, 8, Ely Place.
Goren, James, 29, South Molton Street.
Harvey, Hen. Martin, 11, Fenchurch Bldgs.
Hore, Chas. Frederick, 52, Linc. Inn Fields.
Isaacson, John Frederick, 40, Norfolk St.
Lane, James, 63, Chancery Lane, and 61, Gracechurch Street.

Lever, Chas., 1, Frederick's Pl., Old Jewry.
Low, William Francis, 67, Wimpole Street, Cavendish Square.

Maltby, Henry, 7, Bank Buildings.
Maples, Fred., 6, Frederick's Pl., Old Jewry.
Mayhew, Fred., 4, Verulam Buildings, and Haverstock Hill, Hampstead.

Mordaunt, Octavius Dillingham, 1, Warwick St., Regent St.

Murray, John, 7, Whitehall Place.
Parkinson, Frederick Kidman, 37, John Street, Bedford Row.

Raimondi, Willoughby, 23, Surrey St., Strand.
Remnant, Frederick William, 52, Linc. Inn Fields.

Rogers, Charles, 22, Manchester Buildings.
Rolfe, Charles Wells, 6, South Square Gray's Inn.

Rymer, William Henry, 5, Whitehall.
Shepherd, Mark, 16, Clifford's Inn.
Smith, Robert George, 5, New Inn.
Spyer, Jones, 30, Broad Street Buildings.
Steele, Adam Rivers, 1, Lincoln's Inn Flds.
Tatham, Alfred Charles, 11, Staple Inn, and Haverstock Hill, Hampstead.

Taylor, James, 15, Furnival's Inn.
Williams, Chas. Reynolds, 62, Linc. Inn Flds.
Wootton, Thomas, 10, Tokenhouse Yard.
Wynne, Llewelyn, 46, Lincoln's Inn Fields.

NOTES OF THE WEEK.

HOUSE OF LORDS.—PRIVATE BILLS.

RESOLVED, That no private Bill shall be read a second time after Tuesday, July 11.

That no Bill confirming any provisional order of the Board of Health, or authorising any enclosure of lands under special report of the Enclosure Commissioners for England and Wales, shall be read a second time after Tuesday, July 18.

That when a Bill shall have passed this House with amendments, these orders shall not apply to any new Bill sent up from the House of Commons which the Chairman of Committees shall report to the House, is substantially the same as the Bill so amended.

NEW CORONER.

Richard Wood, Esq., of Rhayader, has been appointed one of the Coroners for the County of Radnor, in the room of *Evan Williams, Esq.*, deceased.

IRISH LAW APPOINTMENT.

Michael Morris, Esq., Barrister-at-Law, has been appointed Crown Prosecutor for the county of Roscommon.

NEW MEMBER OF PARLIAMENT.

The Right Honourable *Earnest Augustus Earl Lisburne* for the county of Cardigan, in the room of *William Edward Powell, Esq.*, who has accepted the office of Steward of her Majesty's manor of Northstead.

INNS OF COURT COMMISSION.

At length a Commission is to be issued, on an Address from the House of Commons, for reforming the Inns of Court. The attorneys and solicitors will of course bring before the Commissioners their objections to the rules, by which they are excluded from being called to the Bar, unless they have ceased for five years to practise as attorneys.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Chancellor.

Pearson v. Rutter. Feb. 25, 1954.

RE-HEARING OF APPEAL.—CONSENT OF PARTIES.—SECURITY FOR COSTS.

An application for the re-hearing of an appeal, on the ground that the parties were

poor and in order to save the expense of an appeal to the House of Lords, was refused, unless on consent of the parties and security for costs being given.

THIS was an application for a re-hearing of this appeal from the decision of Vice-Chancellor Turner, on the ground that the parties

were poor and in order to save the expense of an appeal to the House of Lords.

Robson in support.

The Lord Chancellor said, that the application could not be granted unless by consent and security for costs being given.

Lords Justices.

In re Beavan. Feb. 24, 1854.

LUNACY.—ALLOWANCE OF FEES TO COUNSEL.—RECEIPT STAMP.

Held, that fees to counsel will be allowed, without a receipt stamp on the brief.

THIS was an application in this lunacy for the direction of the Court on the disallowance by Master Parkes of fees to counsel on the ground that there was no receipt stamp on the brief.

T. C. Wright in support.

The Lords Justices said, that the items would be allowed without the stamp.

Attorney-General v. Mayor, &c., of Wigan.
Feb. 26, 27, 1854.

BILL TO RESTRAIN ACTION FOR COSTS INCURRED IN OPPOSING BILL IN PARLIAMENT.—INTERLOCUTORY MOTION FOR INJUNCTION.—BONA FIDES.

It appeared that on a bill being introduced into Parliament for better supplying Liverpool with water, the corporation of Wigan had instructed their solicitors to oppose its passing on the ground that the river which flowed through the town would be diminished, and provisions were introduced into the Act to obviate such result. The solicitors brought an action for the amount of their costs, whereupon an information was filed by the rate-payers to restrain such action and the defendants from levying rates to pay the costs: *Held, dismissing with costs an appeal from Vice-Chancellor Wood, that as the opposition was bonâ fide, the injunction could not be granted on interlocutory motion.*

THIS was an appeal from the decision of Vice-Chancellor Wood (reported 1 Kay, 268), refusing an injunction to restrain the levying of a rate to meet the costs incurred on the opposition to a bill in Parliament. It appeared that the bill in question was applied for by the corporation of Liverpool in 1847, to enable them to obtain a better supply of water and *inter alia* from a stream principally supplying the river Douglas which flowed through Wigan, and that an injury being apprehended, the opposition was conducted in accordance with resolutions passed at a meeting of the town council. The act passed, but provisions were introduced whereby a large body of water was to be restored to the river above the town. The solicitors had brought an action for the amount of their bill of costs against the defendants, and which was sought to be restrain-

ed by the information on behalf of the rate-payers.

A preliminary objection was taken, that the order in the Court below had been enrolled, and that the appeal was therefore to the House of Lords.

W. M. James and *J. V. Prior* in support; *Rolt* and *Cairns*, contra, were not called on.

The Lords Justices said, that it was unnecessary to decide the preliminary objection, as the bill contained no allegation of fraud, collusion, or unfair dealing on the part of the defendants in incurring the costs in question, as the opposition was reasonable, and that the appellant could not succeed on this interlocutory motion relating to a money payment, unless it could be shown there was no probability of the information being dismissed at the hearing. The appeal would therefore be dismissed, with costs.

Master of the Rolls.

Storry v. Walsh. Feb. 28, 1854.

SPECIAL CASE.—SALE OF ADVOWSON.—CONDITIONS OF SALE.—OBJECTION OF TITLE.—PAYMENT OF INTEREST ON PURCHASE-MONEY.

On the sale of an advowson, it was provided by the conditions that the purchaser should pay interest, if from any cause whatever there should be delay in completing the purchase by a time specified. It appeared that this period was exceeded by reason of an objection of title taken by the defendant, that in the conveyance to the vendors of the advowson, which was devised by a testatrix, together with the residue of her real and personal estate subject to payment of debts and legacies, there was only a statement of the payment of such debts and legacies, but no evidence thereof: Held, on special case, that the defendant was liable to pay interest.

THIS was a special case for the opinion of the Court, from which it appeared that the testatrix, by her will, after giving several legacies, devised, subject to the payment of her debts and legacies, the residue of her real and personal estate, which included *inter alia* the advowson of the rectory and vicarage of Great Tey, to the Rev. Richard S. Dixon, whom she also appointed one of her trustees and executors, and that on his death her surviving trustee and executor had conveyed the advowson to the executors and trustees of his will, who had sold the same to the defendant. An objection was taken to the title on the ground that, although in the conveyance to the vendors the executor had stated the payment of the debts and legacies, there was no evidence of such payment. Under the conditions of sale, it was provided that, if from any cause whatever there should be delay in completing the purchase at the time therein specified, the purchaser should pay interest on the purchase-money. On its non-completion in consequence

of this objection as to title, a question arose, whether interest was payable.

R. Palmer and Dickinson for the plaintiff;
J. Bailey and Faber for the defendant.

The Master of the Rolls held, that the defendant was liable to pay interest.

Vice-Chancellor Kindersley.

In re Gill. Feb. 24, 1854,

APPLICATION BY JUDGMENT CREDITOR FOR PAYMENT OUT OF COURT OF FUND PAID IN UNDER TRUSTEES' RELIEF ACT.—CHARGING ORDER.

A Judge's order had been obtained by a judgment creditor, charging a fund paid into Court under the 10 & 11 Vict. c. 96, and with which the debtor had been served: a petition was granted for payment out of Court of the amount of the judgment debt, with interest and costs.

Fischer appeared in support of this petition, on behalf of the Rev. A. Bennett, a judgment creditor, for payment out of Court of part of a fund, which had been paid in under the 10 & 11 Vict. c. 96. It appeared that a Judge's order had been obtained to charge the fund by the petitioner, with which the debtor had been served. The petition also sought payment of interest and costs.

Kinglelake for the trustees.

The Vice-Chancellor made the order as asked.

Vice-Chancellor Stuart.

Grissell v. Peto. Jan. 19, 1854.

SALE OF LEASEHOLD HOUSE UNDER DECREE.—ERROR AS TO PARCELS IN UNDERLEASE BY INADVERTENCE.—SPECIFIC PERFORMANCE.

On the sale of a leasehold house by the trustees under a decree, the conditions of sale stated it to be underleased to L. M., for a term of years, but on an investigation of the title, it appeared that in the lease to L. M., the parcels of an adjoining house had been inadvertently substituted, and that L. M. had assigned his term to Lord W. On an objection being taken to the title, an order had been obtained for an assignment by the trustees and Lord W. to the lessee of the adjoining house, and for the grant to Lord W. from the trustees of a new underlease, in similar terms to the other: A specific performance was decreed.

A LEASEHOLD house was sold to Mr. Godding, under a decree in this cause by the trustees, under a particular of sale, describing it as an improved rental of 45*l.* per annum, arising from a leasehold residence and stabling, being No. 7, Upper Portland Place, Regent's Park, and held under a lease, of which 58 years were unexpired on July 5, 1853, at a ground-rent of 5*l.* per annum, underleased at 50*l.* per annum to Mr. Lewis Mackenzie, for a term to expire at Lady Day, 1911. It appeared that Mr. Mackenzie had afterwards assigned to Lord

Walsingham, and that in the lease to Mr. Mackenzie, the parcels set out were, by inadvertence, those of No. 6, and an order was thereupon obtained, directing an assignment by the trustees and Lord Walsingham to the lessee of No. 6, Upper Portland Place, and the grant of a new underlease from the trustees to Lord Walsingham of the house and premises No. 7, for a term similar to the former, and on Mr. Godding refusing to complete, a summons to enforce the specific performance of the contract was obtained, and now came on before the Court by adjournment.

Campbell and Karlake for Mr. Godding; *Bacon and Piggott* for the trustees were not called on.

The Vice-Chancellor said, that the order of Court had effectually cured the clerical error in the lease, and that the title was good, and a specific performance was accordingly directed.

Warburton v. Warburton. Feb. 25, 1854.

WIDOW.—RIGHT TO DOWER, WHERE WILL MAKES INADEQUATE PROVISION.

*Held, that the widow of a testator was entitled to dower out of his estates, and also to an annuity of 20*l.*, where a similar annuity was given to a stranger, and the will contained no implication of the intention that the provision was to be in satisfaction of dower.*

THE testator, by his will, dated in June, 1846, gave and devised all his real, leasehold, copyhold, and personal estate to his two nephews upon trust to sell and dispose of the leasehold and personal estate, and to invest the moneys arising therefrom upon government or real security, and to receive the rents and profits thereof, and out of the proceeds to pay an annuity of 20*l.* to his wife for life, and also a similar annuity to another person, a stranger in blood, together with a legacy of 100*l.* The will contained a power to the trustees to demise, lease, set, let, and manage the real and leasehold estate, so as to produce the greatest rental, and the widow and the two nephews were appointed executrix and executors. It appeared, also, that by a codicil the testator had directed the real estate should not be sold. On the testator's death, in May, 1850, his widow, who alone survived, proved. A question now arose, whether the widow was entitled to dower, or was not put to her election.

Bacon, Elmsley, and Little for the next of kin, cited *Hall v. Hill*, 1 Dru. & War. 94; *Grayson v. Deakin*, 3 De G. & S. 298; *Parker v. Sowerby*, 1 Drewry, 489.

T. Stevens for the heir-at-law; *Shapter* for the widow.

The Vice-Chancellor said, the rule was, that if a widow, entitled to dower, had a provision by her husband's will, without any statement such provision was made in lieu of dower, she was entitled to her dower as well as the provision in the will, unless a necessary implication arose on the whole will that the gift was in substitution of such right of dower. Al-

though the power given to trustees of leasing was a strong circumstance, it was not enough to raise a necessary implication of the intention that the provision made was to be in satisfaction of dower, and especially as in the present case the provision for her was slender. And she was therefore entitled to both the annuity and her dower.

Vice-Chancellor Wood.

Dawson v. Lawes. Jan. 26, 1854.

OFFICIAL ASSIGNEE. — ACTION AGAINST SURETY ON BOND GIVEN ON APPOINTMENT OF. — INJUNCTION.

A bond was entered into on the appointment of an official assignee with the registrars in bankruptcy. The assignee died, and was found to be a defaulter to a large amount, and the surety alleged in his bill to restrain an action on the bond, that the commissioner and creditors' assignees had neglected to exercise a proper supervision as to keeping accounts and payments into the bank, whereby the defalcation could have been prevented, but there was a denial that any efficient check could have been kept on the official assignee: An injunction was refused on interlocutory motion to restrain the action,—costs to be costs in the cause.

THIS was a motion for an injunction to restrain an action against the plaintiff, who was the surety to a bond given in November, 1842, on the appointment of Mr. George William Freeman as official assignee of the Leeds District Bankruptcy Court, conditioned for the due performance of the several duties as such official assignee. It appeared, that on his death in March, 1853, his successor had discovered, on an investigation, that he was largely in default, and had instituted a suit against his executors, in which a sum of above 4,000*l.*, which was at his bankers and in a cash box, was paid into Court. The action now sought to be restrained was brought by the executrix of Mr. Serjeant Lawes, the surviving obligee of the bond, and the bill alleged that the defalcation arose from the neglect of the Commissioner and the creditors' assignees in the several bankruptcies to exercise a constant supervision over the assignee, and to see that he observed the provisions of the Statutes, rules, and regulations in bankruptcy as to keeping accounts and making payments into the bank, and then sought a declaration that the plaintiff was thereby absolutely discharged from all liability on the bond, and for an injunction to restrain the action. It however appeared that an efficient check could only be kept on the official assignee if the sums received were duly entered.

Daniel and E. E. Kay for the plaintiff; *Rolt and Osborne*, for the defendant, were not called on.

The Vice-Chancellor said, that the bond was given to the registrars, and not to the creditors' assignees, and in accordance with the de-

cision in *Mactaggart v. Watson*, 3 Cl. & F. 525, there must, in order to discharge the sureties, be an active connivance amounting to a fraud on the part of the party taking the security as enabled the officer to get the fund into his hands. This was not the case here, and besides all the facts charged by the bill as to the assignees' default were denied. The injunction would therefore be refused, costs to be costs in the cause.

Smith v. Smith. Feb. 10, 1854.

MISDESCRIPTION OF PLAINTIFF'S RESIDENCE IN BILL.—OBJECTION BY PLEA.

The plaintiff was described in the introduction of a bill of complaint as of "Blank House," to which the defendant pleaded such description was false, as it was the family residence of the defendant, and that the plaintiff, although residing there during her father's lifetime, had quitted her home shortly after his death, and had never since returned, but kept her residence a secret from her family: Held, that although the objection was properly taken by plea, the fact of the plaintiff being resident at the place when the bill was filed was not sufficiently negatived.

It appeared that in the introduction to the bill of complaint in this cause the plaintiff was described as of "Blank House," to which the defendant pleaded that such description was false, as it was the family residence of the defendant, and that the plaintiff, although residing there during her father's lifetime, had quitted her home shortly after his death, and had never since returned, and kept her residence a secret from her family.

W. M. James and Hobhouse for the defendants, in support of the plea; *Shapter* for the plaintiff, contra.

The Vice-Chancellor said, that although it was open to the defendants to take advantage of the misdescription by plea, the averment in the plea was not sufficiently distinct, as the plaintiff might not have left her residence when the bill was filed.

Hill v. Pritchard. Feb. 25, 1854.

MARRIAGE SETTLEMENT WITH POWER OF SALE.—BARRING ENTAIL.—DESTRUCTION OF POWER.

A marriage settlement of property contained a power of sale to the trustees, with the consent of the wife, who was first tenant for life. It appeared she had joined with the tenant in tail in remainder, to bar the entail: Held, that the power of sale was not destroyed thereby, and that the trustees could show a good title.

CERTAIN property was settled on the marriage of Mr. and Mrs. Massey, with a power of sale to the trustees with the consent of Mrs. Massey, who was the first tenant for life, but who had, it appeared, subsequently joined with the tenant in tail in remainder, to bar the entail.

On a sale under the power, a question arose whether a good title could be shown.

James and Wickens contended, that the title was good.

Rolt and Lewis, contra, on the ground the power of sale was destroyed, citing *Roper v. Hallifax*, Sugd. on Powers, 78, 103; 8 Taunt. 845.

The Vice-Chancellor said, that the power of sale was untouched, and that the title was therefore good.

Court of Queen's Bench.

Stanton v. Collier. Jan. 24, 1854.

INSOLVENT.—RIGHT OF ACTION FOR NON-DELIVERY OF PRINTING PRESS.—ASSIGNEES.

Held, that the right of action to recover damages for the non-delivery of a printing press, which had been removed by the defendant as security for a debt, under an agreement for its return on payment of the debt and costs, upon such amount having been tendered, whereby the plaintiff, a printer, was injured in his trade and became insolvent, passed to his assignees.

THIS action was brought to recover damages for the breach of an agreement, whereby the defendant had agreed to re-deliver a printing press, which had been removed by him as security for a debt due from the plaintiff, upon the payment within 14 days of the debt and costs. It appeared that the sum in question had been tendered within the period limited, but that the defendant had refused to re-deliver the press, whereby the plaintiff was alleged to have been greatly injured in his business as a printer, and had become an insolvent. The case now came on upon demurrer to the plea setting up the plaintiff's insolvency.

Wordsworth for the plaintiff; Bullar for the defendant.

The Court said, that in the present case the damage alleged in the declaration for non-delivery of the printing press was substantially such as might have been alleged if the assignees had brought the action, and the defendant was therefore entitled to judgment.

Regina v. London and North Western Railway Company. Nov. 10, 1853; Feb. 18, 1854.

LANDS' CLAUSES' ACT. — JURISDICTION OF JURY UNDER S. 68, TO ASSESS DAMAGES IN RESPECT OF DISPUTED RIGHT OF WAY.

Held (per Lord Campbell, C. J., and Coleridge, J., dissentiente Erle, J.), that a jury summoned under the 8 Vict. c. 13, s. 68, has no jurisdiction to assess damages for the value of a disputed right of way on certain lands taken for the purposes of a railway company, and a rule was made absolute for a certiorari to bring up an inquisition before the sheriff.

THIS was a rule nisi on the defendants for a certiorari, to bring up the record on an inquisition before the sheriff of Warwickshire, at Birmingham, which was held to ascertain the amount of compensation to be paid to the owners for a term of years of certain premises in that town, injuriously affected by the line, and also for the loss of their right of way. It appeared that a sum of 2,700*l.* was claimed, but the sheriff having left to the jury summoned under s. 68 of the 8 Vict. c. 18, the question as to title (which the company disputed), together with the amount for compensation, a special verdict had been found, negating the right of way, and assessing the damages at 150*l.* This rule had thereupon been obtained, on the ground the question of title as to the right of way should not have been left to the jury.

Sir F. Kelly, Mellor, and Bovill, showed cause; Hugh Hill and Willes in support.

Cur. ad. vult.

The Court (per Lord Campbell, C. J., and Coleridge, J., dissentiente Erle, J.) said, that the rule must be made absolute.

Court of Common Pleas.

Frazer v. Fothergill. Jan. 24, 1854.

COUNTY COURT.—RIGHT OF APPEAL FROM INTERPLEADER SUMMONS.—COSTS.

An appeal from the decision of a County Court Judge on an interpleader summons was struck out without any order as to costs, on a preliminary objection as to jurisdiction, after the decision in *Beswick v. Boffey*, 9 Exch. R. 315.

ON this appeal from the decision of the Hythe County Court upon an interpleader summons coming on for hearing,

Atkinson, S. L., for the defendant, took a preliminary objection as to the jurisdiction, and referred to *Beswick v. Boffey*, 9 Exch. R. 315.

Cowling, for the plaintiff, admitted the case cited was conclusive.

The Court accordingly struck out the appeal, but declined to make any order as to costs.

Court of Exchequer.

Burrell v. Power. Jan. 26, 1854.

ACTION BY CONVICT.—SECURITY FOR COSTS.

Held, that a plaintiff in an action to recover damages for his arrest in the United States, for a criminal offence committed in this country, and on which he had been sentenced to 14 years' transportation, and was now a convict at Portland, was bound to give security for costs.

THIS was a rule nisi on the plaintiff to give security for costs in this action which was brought to recover damages for his arrest in the United States for a criminal offence committed in this country, under the treaty for the extradition of criminals. It appeared that the

plaintiff was sentenced to be transported for 14 years, and was now at Portland.

Macnamara showed cause, on the ground that the plaintiff was not to be sent out of the country.

Keating and *Honyman*, in support, were not called on.

The Court said, that a convict was, for all legal purposes, out of the jurisdiction, and could not be reached by the process of the Court, and was bound to find security for costs on the authority of *Harvey v. Jacob*, 1 B. & Ald. 159. The rule was therefore made absolute.

James v. Cochrane. Feb. 4, 1854.

BAIL IN ERROR.—WHERE PLAINTIFF BELOW IS PLAINTIFF IN ERROR.—COMMON LAW PROCEDURE ACT.

Held, that a plaintiff in error, who was likewise the plaintiff below, is not bound under the 15 & 16 Vict. c. 76, s. 151, to give bail in error,—that section not extending the former practice, which only required bail to be given by an appealing defendant below.

THIS was a rule nisi to set aside the execution issued in this action by the defendant, on the ground that the plaintiff in error, who was likewise the plaintiff below, had not perfected bail in error.

By the 15 & 16 Vict. c. 76, s. 151, it is enacted, that "upon any judgment hereafter to be given in any of the said Superior Courts of Common Law in any action, execution shall not be stayed or delayed by proceedings in error, or supersedeas thereupon, without the special order of the Court or a Judge, unless the person in whose name such proceedings in error be brought, with two, or, by leave of the Court or a Judge, more than two sufficient sureties, such as the Court (wherein such judgment is or shall be given), or a Judge shall allow of, shall, within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the party for whom any such judgment is or shall have been given, by recognizance to be acknowledged in the same Court, in double the sum adjudged to be recovered by the said judgment (except in the case of a penalty, and in case of a penalty in double the sum really due, and double the costs), to prosecute the proceedings in error with effect, and also to satisfy and pay (if the said judgment be affirmed, or the proceedings in error be discontinued by the plaintiff therein), all and singular the sum or sums of money and costs adjudged or to be adjudged upon the former judgment, and all costs and damages to be also awarded for the delaying of execution, and shall give notice thereof to the defendant in error, or his attorney."

Manisty showed cause against the rule, which was supported by *Atherton*.

Cur. ad. vult.

The Court said, that although the former

part of the section was general and applied to plaintiffs and defendants, the latter part giving the form of recognizance was limited to the case of defendants, and the old practice which only required bail in error from defendants on appeal from a judgment recovered by plaintiffs against them, was not altered by the Statute, and the rule would accordingly be made absolute, but without costs.

Gibson v. Arrowsmith. Jan. 12; Feb. 7, 1854.

BILLS OF EXCHANGE.—RENEWED, WHERE ORIGINALLY OBTAINED BY FRAUD.—PURCHASE OF MINING SHARES.—MISREPRESENTATION OF PURSER.—EVIDENCE.

Where there has been fraud in obtaining bills of exchange, held that renewal bills are likewise tainted therewith.

In an action on two bills of exchange, the defendant pleaded that they had been given on a sale of shares in a mining concern of which the plaintiff was purser, and which the defendant purchased in consequence of the plaintiff's representing the mine was productive. On the trial, no evidence was produced to disprove the representation, but the defendant relied on the plaintiff's alleged admission that nothing was expected or had been obtained from the mine: Held, that such evidence was insufficient, and a rule was made absolute to set aside the verdict for the defendant and enter a nonsuit.

THIS was a rule nisi for a new trial of this action brought on two bills of exchange for 500l. each, and to which the defendant had pleaded that they were obtained by fraud and covin. It appeared that the plaintiff was purser of a Welch lead mine, and had represented, on a sale by auction of a share therein, that the mine was very productive, upon which the defendant had purchased, and had given two bills on the plaintiff advancing the purchase-money. The bills sued upon were renewal bills, and on the trial before *Martin, B.*, at the Middlesex Sittings after last Term, the learned Judge directed the jury, that if fraud existed in respect of the first set of bills, the second set would likewise be tainted with the same fraud. The defendant had relied on an admission imputed to the plaintiff, that nothing was expected from the mine, and on the fact that nothing had been obtained, and he thereupon obtained a verdict. The rule had been refused on the ground of misdirection, but was granted on the ground of the verdict being against the weight of evidence.

Barstow showed cause; *M. Chambers, Slade*, and *Beasley* in support.

The Court said, that the defendant should have, in order to support his plea, called some one who had examined the mine for the purpose of disproving the plaintiff's representation as to its contents. And the rule must be made absolute for a new trial, unless the defendant consented to enter a nonsuit. Rule absolute to enter a nonsuit.

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SATURDAY, MARCH 11, 1854.  
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THE COUNTY COURTS.

HOW FAR ARE THEY TO BE EXTENDED?

THE Commissioners on the County Courts are, we believe, actively engaged in the discharge of their important duties. The Master of the Rolls, Mr. Justice Erle, Mr. Justice Crompton, and the Attorney-General, are associated with three of the County Court Judges in this important inquiry.¹ Amongst the numerous Royal Commissions for investigating the present state of the Law and the proper means of improving its administration, we are convinced that none is more essential to the future well-working of our system of jurisprudence than the County Court or "Small Debt" Commission. The inquiry involves matters of pre-eminent importance to our Common Law Courts,—to the interests of the public, seeking justice in those tribunals,—to the future competency both of the Bench and the Bar, in the discharge of their duties,—and to the soundness and stability of the law itself.

It appears not only convenient but necessary, that we should at this juncture review the grounds and *principles* on which those local Courts were established. They were professedly designed to bring home justice to every man's door. They were called "the poor man's Court," where he was to obtain his rights cheaply and expeditiously. It was foreseen by some of those who watched the pretensions to which these Small Debt Courts laid claim, that one of the dangers of the system consisted in ap-

pointing 60 barristers as Judges of these Courts, 60 attorneys as chief clerks, a still more numerous staff of local clerks in almost every town in the country, treasurers, bailiffs, &c. It was predicted that, however contented some of the Judges and clerks might be at their fortunate appointment to offices of considerable dignity and emolument, the larger proportion of these functionaries (being, or thinking themselves, competent to higher duties), would desire to extend their jurisdiction and authority, and, perchance, to increase their emoluments. This anticipation has been remarkably verified. From 1846, when the "Small Debt Act" received the Royal Assent, to the present time, scarcely any Session of Parliament has passed without some effort, more or less successful, for the extension of the powers of the Court. The original Act confined the jurisdiction of the Courts to *debts* and *demands* not exceeding 20*l.*,—a sum not much above the jurisdiction of some of the Courts of Request, and probably (in reference to the value of money) in due proportion to the 40*s.* limit of the ancient Courts. At one stride, the jurisdiction was extended to 50*l.*,—an amount certainly very inconsistent with the humble denomination of a *small debt*. Other powers have also been conferred by subsequent Acts,—such as the jurisdiction over many thousand charitable trusts.

We complain not of the granting to these Courts a certain amount of jurisdiction under proper regulations, but the Judges and officers, it appears, are dissatisfied with their present progress, and seek to enlarge still further their jurisdiction, we know not to what extent. Indeed, from some recent movements on their part, we apprehend they have the ambition (though at present somewhat concealed) of gradually becoming *Courts of the First Instance* in all cases and

¹ The Hon. Mr. Fitzroy, Mr. Keating, Q. C., and Mr. Mullings, M. P., are also Commissioners. The County Court Judges are Mr. Koe, Q. C., Mr. Serjeant Dowling, and Mr. Pitt Taylor.

to an unlimited extent, both pecuniary and territorial. The questions recently issued, indicate very clearly that the Courts aim at issuing their process into every part of the kingdom, and to place themselves upon the same footing as her Majesty's Superior Courts of Law.

One of the obvious objections to the extension of the County Courts is, that they will cease to be what they were designed to be,—“*Small Debt Courts*,”—superseding, as they did, the various local Courts of Request. It is manifest that if the comparatively few able Judges now presiding in the County Courts should succeed in extending their jurisdiction to the trial of all kinds of actions, it would be necessary to increase the number of that class of Judges, and to re-constitute an inferior class such as formerly presided in the Courts of Request and other local tribunals.

We feel sure that the intelligent people of this country will not approve of a total change of the system of our Courts of Justice;—that after abolishing the ancient County Courts, the various Courts of Request, and the Borough Courts, and establishing these “*Small Debt Courts*,” we are now to elevate these usurpers to the rank of the old Superior Courts, and leave the small debtors and creditors undressed, or *re-establish the abolished Courts of Request*.

But how can the result be otherwise, if the aspiring County Court Judges are, in regard to competency and emolument, to be raised to the rank of “*Courts in the first Instance*?” If they are to try all kinds of causes, how can they afford time to dispose of those thousands of small claims, and adjust the various periods of payment? Or, are these petty complaints to devolve on an assistant clerk of the Court, much in the same form and manner as the abolished Courts of Request?

When we look at the consequences of such a change, it may be asked, what will the bankers, merchants, shipowners, and manufacturers of the city of London, of Liverpool, Manchester, Bristol, and the other great commercial cities and ports of Great Britain, say to the trial of their important questions of Mercantile Law before some of the County Court Judges whom we could name (or even the best of them?) Conceive of the “*merchant princes*,”—men engaged in transactions of many millions annually,—who have been accustomed in times past to look up to such men as Lords Mansfield, Ellen-

borough, Tenterden, Denman; and now to Lord Campbell,—submitting to the “*ruled*” and “*laying down of the law*” by men totally unknown, either at the Guildhall of London, or on the Northern or Western Circuits!

Consider, also, if we imagine it possible, that the Superior Courts at Westminster are to become mere Courts of Appeal, how competent Judges to preside in them are to be obtained? If the Trials at Nisi Prius and the Assizes, and all the original business of the Superior Courts of Law, are to be dispersed over all England and Wales, under the auspices of 60 itinerant Judges, necessarily of inferior rank and learning to the present Judges of the land, with a local Bar, unacquainted with the great Courts of Westminster, and unchecked by the vigilance of learned reporters and the metropolitan press,—what may we expect will be the result? From what school of law will the Advocates and the Judges of the Courts of Appeal be selected?

All these matters require consideration; but above all, we conceive that a triple system of administering Common Law Justice will never be sanctioned. If some of the Small Debt Court Judges are too proud to carry the original intention of the Legislature into effect, let them resign, and leave humbler and more useful men to perform the duty. If the Court were limited to 20*l.*, the fees reduced, and the practice improved, they might secure the approval of the community. At present, we believe, they constitute a barrier to justice. Although the Suitor may know that there can be no defence to their claims, yet they abandon them because they cannot spare the time, trouble, and expense of personally seeking that redress which, in the Superior Courts they could obtain by the assistance of an attorney at less expense.

The remedies for this unsatisfactory state of things seem to be these:—Confine the County Courts to their proper province of small debts and demands;—let attorneys act in those Courts as in the Superior Courts, instead of clerks and bailiffs; give the Superior Courts concurrent jurisdiction down to 10*l.*;—reduce the number of County Court Judges, clerks, and officers;—reform the practice as to undefended causes, and otherwise simplify the proceedings. The Courts will then take a useful place in our system of jurisprudence, and obtain the respect of the public.

TESTAMENTARY JURISDICTION. BILL.

THIS Bill is intituled "An Act to transfer to the Court of Chancery the Testamentary Jurisdiction of the Ecclesiastical Courts, and to alter and amend the Law in relation to Matters of Testacy and Intestacy."

The preamble recites, that it is expedient that the jurisdiction of granting probates of wills and administration of the effects of deceased persons should cease to be exercised by Ecclesiastical or Manorial Courts in England or Wales, and that such jurisdiction should be exercised by the High Court of Chancery: And that the law with respect to matters of testacy and intestacy should be altered and amended. The proposed clauses are as follow:—¹

1. The provisions of this Act (except where otherwise specially provided) shall come into operation on such day, not sooner than the 1st January, 1855, as her Majesty shall by order in Council appoint, provided that such order shall be made *three months* at least previously to the day so to be appointed.

2. Interpretation clauses.

3. In citing this Act, it shall be sufficient to use the expression "The Testamentary Jurisdiction Act, 1854."

4. No jurisdiction in the granting or revoking of probate of wills or administration of the effects of deceased persons shall be exercised in England or Wales by her Majesty (except as hereinafter mentioned) or by any Ecclesiastical Court, or by any lord of a manor, or body politic or corporate, or by any person or persons whomsoever, who at or before the time appointed for the commencement of this Act shall exercise or be entitled to exercise such jurisdiction.

5. No jurisdiction with respect to the recovery of legacies, or the production of inventories, or accounts of the goods, chattels, or credits of testators or persons dying intestate, or the distribution thereof, or otherwise in any testamentary cause or matter, or any matter arising out of or connected with the grant of administration, shall be had, used, or exercised by any Ecclesiastical Court in England or Wales.

6. The whole of the jurisdiction in England and Wales in matters of testacy and intestacy shall belong to and be exercised by her Majesty in her High Court of Chancery at Westminster.

Testamentary Office.

7. There shall be an office of the Court called "the Testamentary Office," which shall be exclusively appropriated to the transaction

¹ The important clauses are given fully, this being a House of Lords' Bill, which cannot be purchased at Mr. Hansard's.

of common form business, and wherein all wills and other documents appertaining to the jurisdiction of the Court in matters of testacy and intestacy shall be deposited and kept.

8. Seal of the Court.

Officers of the Court.

9. There shall be the following officers of the Court attached to the Testamentary Office; (that is to say,)

In London :

One principal registrar;

Three registrars;

Three keepers of records;

Nineteen principal clerks to the registrars;

One sealer; and

So many assistant, writing, and engrossing clerks, messengers, and servants, as the Lord Chancellor, with the sanction of the Commissioners of her Majesty's Treasury, may from time to time think fit.

In the Country :

One registrar for each of the country districts specified in the Schedule (A.) to this Act, and to act at the places respectively mentioned in such Schedule with respect to such district; and

One clerk; and

One messenger to each of such district registrars.

10. The Lord Chancellor empowered, with the sanction of the Lords Commissioners of the Treasury, to increase the number of registrars and clerks, provided that not more than two additional registrars, and six additional clerks to the registrars in London, or more than two additional clerks to any district registrar, shall be so appointed.

11. The principal registrar and all the other officers of the Court attached to the Testamentary Office, except as hereinafter mentioned, shall be appointed by the Lord Chancellor.

12. The first registrars, record keepers, and principal clerks, to be named in this clause.

13. The principal registrar shall have the general superintendence and control of the Testamentary Office, and the officers thereof, and the business transacted therein, and at the time of being appointed shall be or have been an advocate of the Court of Arches of 10 years' standing, or a barrister-at-law of the like standing.

14. No person shall hereafter be appointed registrar, district registrar, keeper of records, or principal clerk to the registrars, who shall not be or have been an advocate of the Court of Arches, a barrister-at-law, a proctor in the Courts at Doctors' Commons or in some Ecclesiastical Court in England or Wales, or a solicitor of the Court of Chancery at Westminster: Provided, that any person who at the time of the passing of this Act was acting either as articled clerk or paid clerk to a proctor in the Courts at Doctors' Commons, shall be eligible to the office of registrar, district registrar, keeper of records, or principal clerk to the registrars.

15. The principal registrar, registrars, dis-

strict registrars, and keepers of records attached to the testamentary office, shall execute their respective offices in person, and shall hold the same during their good behaviour, subject to be removed by the order of the Lord Chancellor for some good and reasonable cause to be in such order expressed; the other officers of the Court attached to the Testamentary Office shall execute their respective offices in person, and not by deputy, and shall hold their offices during the pleasure of the Lord Chancellor.

16. The assistant and writing and engrossing clerks, servants, and messengers in London shall be appointed by the principal registrar, with the approbation of the Lord Chancellor.

17. The clerk and messenger of each district registrar shall be appointed by such district registrar with the approbation of the Lord Chancellor.

18. In case any principal registrar, or other officer appointed or to be appointed by virtue of this Act, shall by reason of ill health or other infirmity become temporarily incapable of performing the duties of his office, or shall for any other reasonable cause to be allowed by the Lord Chancellor, apply to be relieved from the discharge of the duties thereof for a certain time only, it shall be lawful for the Lord Chancellor to appoint some fit and proper person to discharge the duties of such office for any period not exceeding one year, and the person so appointed shall during such period have all the power and authority of the principal registrar or other officer in whose place he shall be so appointed, and shall be paid by such principal registrar or other officer such sum by way of salary or allowance as shall be agreed upon between them respectively, to be approved of by the Lord Chancellor.

19. Power to Lord Chancellor to direct registrars attached to Testamentary Office to discharge the duties of principal registrar during Vacation, &c.

20. Power to Lord Chancellor to remove any officer appointed under this Act, engaging in other employment or accepting any fee or emolument whatever other than his salary.

21. Every proctor hereby appointed to any office under this Act, and every proctor, attorney, or solicitor who shall be appointed to and shall accept any office under this Act, shall cease to practise as a proctor, or attorney, or solicitor, and shall forthwith procure himself to be struck off the list of proctors or off the roll of any of her Majesty's Courts of Westminster on which his name may be.

22. The principal registrar, registrars, and district registrars appointed and to be appointed under this act, shall respectively have full power to administer oaths, and any person swearing before any such principal registrar, registrar, or district registrar shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing as if the matter sworn had been sworn before any officer of the Court now authorised to administer oaths.

23. Officers subject to same penalties, &c.,

as imposed, &c., under Act 3 & 4 Wm. 4, c. 94, as respects officers of the Court of Chancery.

24. The Testamentary Office shall be established in such place as her Majesty in Council shall from time to time appoint, and until another Testamentary Office shall be appointed by her Majesty in Council the present public registry of the Prerogative Court shall be used as the Testamentary Office.

25, 26. Provisions made for the compensation of the Rev. R. Moore.

Advocates, Proctors, and Solicitors.

27. All persons who at the time of the passing of this Act were admitted advocates of the Court of Arches shall be entitled to practise as counsel in any of her Majesty's Courts of Law or Equity in England or Wales, in like manner in all respects and with the same rank and precedence as if they had respectively been duly called to the degree of barrister-at-law on the day on which they shall respectively have been admitted as advocates of the said Court of Arches.

28. Every person who at the time of the passing of this Act was actually admitted and practising as a proctor and notary in the Courts in Doctors' Commons or any Ecclesiastical Court in England or Wales may, at any time after the passing of this Act not later than one year thereafter, be admitted as a solicitor of the Court, upon the production of his admission as such proctor and notary, or an official certificate thereof, and upon the production of an official certificate that such admission continues in force, and upon signing the roll of the Court, but not otherwise; and such admission shall entitle such proctor so admitted as a solicitor to be afterwards in like manner admitted, if he shall so think fit, and to be enrolled, as an attorney of her Majesty's Superior Courts of Common Law at Westminster.

29. Every person who at the time of the passing of this Act was actually serving or had served as an articulated clerk to a person entitled to act as a proctor in the Courts at Doctors' Commons, or in some Ecclesiastical Court in England or Wales, and entitled, according to rules and regulations which were then in force to take such articulated clerk, and who has not been admitted as a proctor, shall be entitled, at any time within one year after his admission as a proctor, to be admitted as a solicitor of the Court, in like manner in all respects and with the like privileges as if he had been admitted as a proctor and notary at the time of the passing of this Act.

30. The exclusive right to act as a solicitor in respect to common form business in the Court other than the common form business transacted through the country district office, and to receive fees in respect thereof, shall, for the period of 10 years from the time appointed for the commencement of this Act, belong to such of the solicitors of the Court as being proctors in the Court at Doctors' Commons, shall have been admitted as solicitors in pur-

stance of the provisions of this Act; provided, that if the number of solicitors so admitted under the provisions of this Act shall be reduced below 80, it shall be lawful for the Lord Chancellor to authorise so many persons as he shall think fit, being solicitors of the Court, to act as solicitors in respect of such common form business, and to receive fees in respect thereof, but so that the whole number of solicitors so authorised, together with the number of solicitors being proctors, do not exceed 120.

31. The Lord Chancellor shall from time to time authorise and appoint such and so many persons, being solicitors of the Court, as he shall think fit, to have the exclusive right to act as solicitors in respect of the common form business transacted through the district offices in cases where the place of the district office as specified in the Schedule (A.) to this Act is a place where on the 1st January, 1854, there shall have been one or more resident proctor or proctors, and to receive fees in respect thereof, for the period of 10 years from the time appointed for the commencement of this Act, and such persons so appointed shall for such period have the exclusive right to act as solicitors in respect of common form business in and for the district to which they shall be so appointed and for such period as aforesaid, and to receive fees in respect thereof; provided, that the Lord Chancellor in making such appointments as last aforesaid, shall give the preference to such solicitors of the Court as shall be proctors either in the Courts at Doctors' Commons or in some Ecclesiastical Court, or so far as the same can be done with a due regard to the convenience of the public.

32. The right to act as a solicitor in respect of common form business in and for the other country districts shall from and after the time appointed for the commencement of this Act be open to all solicitors of the Court.

33. From and after the expiration of 10 years from the time appointed for the commencement of this Act the right to act as a solicitor in respect of common form business throughout England and Wales, and to receive fees in respect thereof, shall be open to all solicitors of the Court.

34. Penalty for forging or counterfeiting seal of Court, or signature of officers.

Jurisdiction and Powers of the Court.

35. The jurisdiction of the Court in matters of testacy and intestacy shall comprehend the following subjects; (that is to say,)

1. The determination of all questions as to the validity of wills, as well with respect to the real estate as to personal estate.
2. The grant and recal or revocation of probates of wills and letters of administration as to personal estate:
3. The grant and recal or revocation of probates of wills and certificates of intestacy as to real estate.

36. No will of any person dying after the time appointed for the commencement of this Act shall be received or receivable in evidence

in the Court (except in matters of testacy or intestacy, or in cases of waste, or other cases requiring the immediate interposition of the Court), or in any other Court, or before any other tribunal, either with respect to real or personal estate, unless and until such will shall have been proved in the Court, under the provisions of this Act.

37. The probate or an official copy of the will of any deceased person, under the seal of the Court, shall be conclusive evidence of the validity and contents of such will in the Court, except in suits or proceedings therein in which the will shall be in contest, and in all other Courts, and before all other tribunals, unless and until such probate shall be shown to have been recalled or revoked by decree or order of the Court.

38. No person claiming any real estate, either at law or in equity, by reason or in consequence of the death of any person, after the time appointed for the commencement of this Act, wholly intestate as to his real estate, either as the heir of such deceased person or in any other character or capacity, shall be entitled to maintain any action or suit for the recovery of such real estate, or the rents and profits thereof or any part thereof respectively, unless and until the intestacy of the deceased shall be shown by a certificate of intestacy: Provided, that the Court may, if it shall so think fit, dispense with such certificate of intestacy in cases of waste, or other cases requiring the immediate interposition of the Court.

39. A certificate under the seal of the Court of the intestacy of any deceased person, while unrecalled or unrevoked by decree or order of the Court, shall be conclusive evidence in the Court, except in suits or proceedings therein in which the intestacy may be in contest, and in all other Courts and before all other tribunals, that such person died intestate as to his real estate, and, except in such suits or proceedings as aforesaid, no evidence to the contrary thereof shall be received or receivable.

40. Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, and it shall appear to the Court to be necessary or convenient in any such case to appoint some person to be the administrator of the personal estate of the deceased other than the person who, if this Act had not passed, would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the Court to grant administration of the personal estate of such deceased person to the person who, if this Act had not passed, would by law have been entitled to a grant thereof, but it shall be lawful for the Court, in its discretion, to appoint such person as the Court shall think fit to be such administrator, and if in the judgment of the Court, under the special circumstances of any particular case, it shall be proper or advisable so to do, to appoint as such administrator a person to be under the

immediate control of and immediately accountable to the Court, and to allow to such person such remuneration out of the estate as the Court shall think fit.

41. It shall be lawful for the Court to appoint an administrator to the personal estate of any deceased person pending any suit in the Court touching the validity of any will of such deceased person, or for the obtaining, recalling, or revoking any probate of a will or any grant of letters of administration of his personal estate; and the administrator so appointed shall have all the rights and powers of general administrators other than the right of distributing the residue of such personal estate after payment of the funeral expenses and debts of such deceased person, except so far as such rights and powers may be limited or restricted by any order of the Court; and every such administrator shall be subject to the immediate control of the Court, and act under its direction.

42. It shall be lawful for the Court to appoint a receiver of the real estate of any deceased person pending any suit in the Court touching the validity of any will of such deceased person, or for the obtaining, recalling, or revoking any probate of his will, or certificate of intestacy as to his real estate.

43. It shall be lawful for the Court to direct that administrators and receivers appointed by the Court pending suits therein in matters of testacy and intestacy should receive out of the personal or real estate of the deceased, as the case may be, such reasonable remuneration as the Court shall think fit.

44. After any administration shall have been granted by the Court of the personal estate of any deceased person, or any part thereof, no person shall have power to sue or prosecute any suit or otherwise act as executor of the deceased as to the estate comprised in or affected by such grant of administration until the same grant shall have been by act of the Court revoked or declared to have been determined.

45. The revocation or determination by act of the Court of any temporary administration granted by the Court shall in no wise prejudice any proceedings at law or in equity which may have been commenced by or against any administrator so appointed; but a suggestion may be made upon the record, of the revocation or determination of such administration, and of the grant of probate or administration which shall have been made consequent upon such revocation or determination; and the proceedings which shall have been commenced by or against the administrator whose administration shall have been so revoked or determined shall be continued in the name of the executor or administrator constituted or appointed in his place, in like manner in all respects, with reference to liability to costs and otherwise, as if the proceeding had been originally commenced by or against the executor or administrator so last established or appointed.

46. The Court shall have the same or the like power and control over all wills and testa-

mentary instruments, and over all papers or writings purporting to be testamentary, as the Prerogative Court now has or can exercise with respect to matters within the jurisdiction of the same Court.

47. The Court shall also have jurisdiction to order the removal from the registry or the cancellation of any will which may be shown to the satisfaction of the Court to have been forged, or the cancellation or restoration of any part of a will which may be shown to have been forged, altered, or tampered with.

[*To be continued.*]

REPRESENTATIVES OF THE PROFESSION IN PARLIAMENT.

INNS OF CHANCERY AND ATTORNEYS.

A CONSIDERABLE time before the Government plan was announced, we urged the claims of the larger branch of the Profession to be represented in the House of Commons. The measure having been postponed till the end of April, it is scarcely necessary at present to consider its details and the proposed extent or limits of the constituency, or the legal classes to whom the power of election is to be confided. The Graduates of the London University, as an educated class, and Barristers-at-Law, as Members of the Inns of Court, are, it seems, to have votes, and it can scarcely be intended to exclude the general body of Attorneys and Solicitors. It may be further anticipated, that as the members of the smaller Colleges or Halls of the Universities of Oxford and Cambridge are represented, so will be the members of the Inns of Chancery, composed for the most part of attorneys, and connected by ancient usage with the Inns of Court.

We invite the communications of our readers on the views entertained by them on this important subject.

REGISTRATION OF BILLS OF SALE BILL.

THIS Bill recites, that frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up appearances of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors; and for remedy proposes to enact—

Every bill of sale, made by any person liable to become bankrupt, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee shall have

power to seize any property comprised therein, and every schedule thereto, or a true copy thereof, and of every attestation of its execution, shall, together with an affidavit of the time of its being made, and a description of the residence and occupation of the person making the same, and of every attesting witness thereto, be filed with the clerk of docket and judgments in the Queen's Bench, within 21 days after the making such bill of sale (in like manner as a warrant of attorney), otherwise such bill of sale shall be null and void as against assignees in bankruptcy or insolvency, or under any assignment for the benefit of creditors, and as against persons seizing under any process in law or equity; (s. 1).

Any defeasance, or condition or declaration of trust, not contained in the body of bill of sale, shall be taken as part thereof, and be written on the same paper or parchment, before filing the same, otherwise such bill of sale shall be null and void; (s. 2).

The Queen's Bench officer shall keep an alphabetical list of every bill of sale, containing the name, address, and description of the person making the same, and of the person to whom it is given, whether absolute or conditional, together with the number and the date of executing and filing the same, and the sum for which given and when and how made payable, according to the form in Schedule. And such book may be searched by all persons at all reasonable times, on payment for every search against one person of 6d. And in addition to such book, the officer shall keep another book containing the name, address, and description of the person making such bills of sale, and also of the persons to whom the same shall be given, but containing no further particulars, which all persons shall be permitted to search for themselves on payment of 1s.; (s. 3).

A fee of 1s. to be paid for filing and entering every bill of sale or copy thereof; (s. 4).

Office copies or extracts to be given on paying the usual rates for office copies of judgments; (s. 5).

A Judge of the Queen's Bench may order a memorandum of satisfaction to be written on any bill of sale or copy, if it shall appear the debt, for which it is given as security, shall have been discharged; (s. 6).

Interpretation of terms; (s. 7).

COUNTY COURT EXTENSION ACT EXPLANATION.

THE Bill, after reciting that doubts have arisen touching the construction of the 13 & 14 Vict. c. 61, ss. 14, 17, proposes to enact that the right of appeal given by the said 14th section shall extend to all cases in which jurisdiction is given by the said 17th section in consequence of the agreement of parties.

This bill is brought forward in consequence of the decision of the Court of Exchequer in *Jansens v. Grove* (reported 23 Law J., N. S., Exch. 91; *ante*, p. 248), that an appeal does not lie from the decision of a County Court Judge in a case submitted under s. 17 by the consent of both parties, where the subject-matter exceeds 50l.

MANCHESTER COURT OF RECORD.

EXTENSION OF POWERS.

THE following is an analysis of the Bill just brought in by Mr. Milner Gibson. We have printed in *italics* some of the clauses which require attention:—

Jurisdiction of Court to be co-extensive with borough.

Recorder to be Judge.

Recorder may appoint a deputy.

Remuneration to the recorder.

Orders, &c., may be made by or before the registrar in the absence of the recorder.

Courts to be held six times yearly.

Time and place for ordinary business of Court.

Notice of holding Courts.

Rules for regulating Court to be made and signed by recorder, confirmed by Judges, and in accordance with this Act.

Council to appoint a registrar, officers of the Court, and serjeant-at-mace.

Penalties on registrar for acting improperly.

Council may appoint clerks, criers, &c.

Registrar may appoint a deputy.

Registrar and serjeant-at-mace to give security.

Payment of salaries to deputy Judge, registrar, serjeant-at-mace, &c.

Attorneys of Superior Courts may practise; s. 20.

Council to determine fees payable to registrar and officers of the Court.

Council may alter fees.

Table of fees to be hung up.

Fees to be received by registrar and carried to account of the general fund of "The Borough Court of Record."

Registrar to render account to council or treasurer, and pay over moneys as council shall direct.

Moneys paid to treasurer to be carried to account of "The General Fund of the City Court of Record," and how to be applied.

Expenses of the Court may be paid out of the city fund.

All powers, &c. by law vested in inferior Courts of Record in which a barrister of five years' standing presides as Judge, granted to the Borough Court of Manchester; s. 28.

Process of Court to be under seal.

No privilege allowed.

Restrictions as to plea in abatement for non-joinder of co-defendant.

Witnesses out of jurisdiction may be served with subpoena; s. 32.

If rules of Court cannot be enforced, they may be made rules of one of the Superior Courts.

Causes not to be removed before judgment except by Judge's order or on security.

Writs to remove causes to be lodged within a month after declaration.

Officers taking any fee besides the fee allowed, to be discharged.

Limitation of actions for proceedings in execution of this Act.

Writs for commencement of actions.

Indorsement of debt and costs on writ and copy, with notice that proceedings will be stayed on payment within four days.

Tests of writs.

Court may order that the writ of summons may be served in any part of England or Wales; s. 41.

All further proceedings to be had as usual.

Proceedings to be stayed in certain cases.

Proceedings on defendant confessing part of debt.

Applications without entering an appearance.

Mode of objecting to the jurisdiction.

Appearance and proceedings in default of appearance.

Cost of judgment to be fixed by registrar.

Joinder of parties.

Joinder of Causes of Action.

Different causes of action may be joined; but separate trials may be ordered.

Questions by consent without pleading.

A special case may be stated for the opinion of one of the Superior Courts at Westminster.

Special case to be transmitted by the registrar to the rule department.

Upon production to registrar of rule to Superior Courts, judgment to be entered; ss. 52, 53, 54.

Pleadings in general.

Objections by way of special demurrer taken away.

Declaration and particulars of demand.

Pleas and subsequent pleadings.

Defendant to plead in eight days.

Pleas *puis darrein continuance*, when and how to be pleaded.

Money, how paid into Court.

Examples of pleadings.

Admission, Production, and Inspection of Documents.

Admission of documents.

Production and inspection of documents.

Judgment by default.

Notice of Trial or Inquiry, and Countermand, and Costs of the Day, and Judgment for Default in not Proceeding to Trial.

Proceeding where plaintiff neglects to bring issue on to be tried.

Defendant's right to try upon default of plaintiff, preserved.

Jurors.

Who to be jurors.

Copy of the burgess roll to be delivered to registrar.

Registrar to summon jury.

Fine on jurors for non-attendance.

Members of the Council, &c., exempt from serving on juries.

Mode of obtaining special jury.

Notice to registrar of trial by special jury.

Special juries.

Special juries to be summoned to try all special jury causes.

Costs of special jury.

Tales de circumstantibus.

View.

Cross judgments.

Execution.

Provision for issuing and renewing writs of execution and for maintaining precedence thereof.

Production of renewed writ, evidence of renewal.

Detention of persons in custody.

Revival of Judgment.

Proceedings to revive.

Death, marriage, and bankruptcy.

Arrest of judgment and judgment *non obstante veredicto*.

Judgment and Execution, New Trials, and entering Nonsuits and Verdicts.

Costs may be taxed and execution issued on any day subsequent to the trial.

Judge may hold Court for trial of issues of law only.

Power to the recorder, when out of the city, to hear motions.

Rules to enter verdict, &c., to be moved before any of the Courts of Westminster by leave.

Not to take away power of granting new trials.

New trials may be moved for in the Superior Courts on certain conditions.

Removal of judgments in the Superior Courts.

Proceedings in Error.

Proceedings in error.

No execution shall be stayed by writ of error except on certain conditions.

Action of Ejectment.

Provisions as to ejectment.

Judgment for not proceeding to trial after notice.

Amendment of proceedings by recorder.

General rules may be made.

In cases not provided for, rules of Superior Courts may be adopted.

Affidavits.

Affidavits may be sworn out of jurisdiction.

Costs.

Plaintiff recovering not exceeding 5*l.* in action of contract, and 40*s.* in actions for a wrong, to have no costs.

Judge at trial, or other presiding officer, may certify to entitle plaintiff to costs.

If the Court make an order, plaintiff to have costs.

Examination of Witnesses unable to attend the Trial and Witnesses Abroad.

Depositions of witnesses may be taken.
Compelling attendance of witnesses, or production of documents—Payment of expenses—as to production of documents.

Commission to examine witnesses out of England.

Examination of prisoners.

Examination of witnesses to be taken upon oath.

The persons appointed for taking examinations may report to the Court.

Costs of order and proceedings.

Restriction as to reading depositions.

Interpleader.

Interpleader by defendant in action.

Judgment and decision final.

Claim of party not appearing, barred.

Rules, &c., may be entered of record.

Attendance of witnesses.

Powers of Superior Court or Judge thereof to be exercised by the Court.

Powers of Master of Superior Court to be exercised by registrar.

Powers of Master and Judge under Common Law Procedure Act extended to recorder and registrar.

Forms referred to in the Common Law Procedure Act applied to this Act.

Power to take recognizances.

Gaol for the custody of parties in execution.

Provisions as to debtors in execution to extend to persons in custody under orders, &c.

Persons committed under 8 & 9 Vict. c. 127, may be sent to city gaol.

Costs of hearing, &c., to form part of subsequent costs, within meaning of 8 & 9 Vict. c. 127.

Warrants of commitment under 8 & 9 Vict. c. 127, may be executed out of jurisdiction; s. 129.

Actions, &c., commenced when Act comes into operation not to abate.

CONSTRUCTION OF STATUTES.

COMMON LAW PROCEDURE ACT.—ORDER FOR LEAVE TO PROCEED AS IF PERSONAL SERVICE EFFECTED.—SETTING ASIDE FINAL JUDGMENT.—AFFIDAVIT.

IN an action to recover a penalty of 100*l.* under the 25 Geo. 3, c. 36, s. 2, the writ was specially indorsed under the 15 & 16 Vict. c. 76, s. 25, but the endeavours to serve the defendant personally therewith were ineffectual. The plaintiff then obtained a Judge's order under s. 17, for liberty to proceed as if personal service had been effected upon notice of the application for, and copy of, the order being left at the defendant's residence,—execution not to issue until eight days after such

notice and copy order had been so left. The plaintiff, however, signed final judgment on the same day as they were left, and a Judge's order was thereupon obtained setting it aside and letting the defendant in to defend under s. 27, without affidavit.

On motion to rescind the Judge's order setting aside the judgment, *Parke, B.*, said,—"The words used by the Legislature in the 27th section are, not that the defendant shall be let in to defend 'upon an affidavit of merits' merely, but 'upon an application supported by satisfactory affidavits accounting for the non-appearance, and disclosing a defence upon the merits.' My impression is, that the section cannot be taken to require the defendant to make such an affidavit in all cases. Suppose the application to sign judgment were grounded wholly upon affidavits containing a variety of false statements, every one of which the defendant is able to contradict and disprove, could it be said that, because the plaintiff has succeeded in his application by such false statements, it would be incumbent upon the defendant to make an affidavit disclosing the merits of his case? I cannot help thinking that the affidavit of merits is only required where the Judge is of opinion that the judgment has been regularly signed;" and held that the plaintiff was entitled to sign judgment at once under s. 27. *Hall v. Scotson*, 9 Exch. R. 238.

TESTIMONIALS OF PERPETUAL COMMISSIONERS.

THE Testimonials required by the Lord Chief Justice in support of an application from a country solicitor to be appointed a Perpetual Commissioner for taking the acknowledgments of Married Women are usually as follow:—

A memorial stating: how long the applicant has been admitted, and how long resident and practising in the city or town where he seeks to be appointed,—stating also how many Commissioners there now are in the city or town, and how far from other places.

Testimonials of fitness and respectability should be left from inhabitants of the place, particularly barristers, clergymen, and bankers, and the recommendation of the member representing the town or borough in Parliament is desirable.

SHERIFFS, UNDER-SHERIFFS,

Note.—WARRANTS are not granted in Town for those Places marked (*)

ENGLAND.

<i>Counties, &c.</i>	<i>Sheriffs.</i>
Bedfordshire	Frederick Charles Polhill Turner, of Howbury Hall, Bedford, Esq. ..
Berkshire	James Josiah Wheble, of Bulmershe Court, Esq.
Berwick-upon-Tweed ..	George Johnston, of Berwick-on-Tweed, Esq.
*Bristol, City of	Philip John William Miles, of Bristol, Esq.
Buckinghamshire	Henry Horner, of Stockgrove, Leighton Buzzard, Esq.
Cambridge and Hunts. ..	George William Rowley, of the Priory, St. Neots, Hunts, Esq. ..
*Canterbury, City of ..	Joseph Jackson, of Canterbury, Esq.
Cheshire	Fras. Dukinfield Palmer Astley, of Dukinfield Lodge, Dukinfield, Esq. ..
*Chester, City of	Samuel Peacock, of Chester, Esq.
*Cinque Ports	The Most Noble James Andrew, Marquis of Dalhousie
*Cornwall	Francis Howell, of Ethy, near Lostwithiel, Esq.
*Cumberland	Thomas Alison Hoskins, of Higham, near Cockermouth, Esq. ..
*Derbyshire	William Drury Lowe, of Locko Park, Esq.
Devonshire	Richard Sommers Gard, of Rougemont, Esq.
Dorsetshire	Sir Henry Oylander, of Parnham House, near Beaminster, Bart. ..
*Durham	Henry John Baker Baker, of Elemore Hall, Durham, Esq.
Essex	Thomas White, of Manor House, Weathersfield, Esq.
*Exeter, City of	Joseph Sheppard, of Cowley House, near Exeter, Esq.
*Gloucestershire	John Henry Elwes, of Colesborne, near Cheltenham, Esq.
*Gloucester, City of ..	Robert Heane, of Gloucester, Esq.
Hampshire	Jeremiah Robert Ives, of Bentworth Hall, near Alton, Esq.
Hertfordshire	Robert Hanbury, of Poles, Thurnridge, Esq.
Herefordshire	Elias Chadwick, of Puddleston Court, Esq.
Huntingdon and Cambridge	George William Rowley, of the Priory, St. Neots, Hunts, Esq. ..
Kent	Alexander Glendining, of Ashgrove, Sevenoaks, Esq.
*Kingston-upon-Hull ..	Charles Liddell, of Hull, Esq.
Lancashire	Richard Fort, of Read Hall, Esq.
*Leicestershire	Henry Corles Bingham, of Wortnaby Hall, Esq.
*Lichfield, City of	Joseph Naden, of Lichfield, Esq.
Lincolnshire	Anthony Willson, of Ranceby Hall, Esq.
*Lincoln, City of	Theodore Trotter, of Lincoln, Esq.
Middlesex	{ David Williams Wira, of 9, St. Swithin's Lane, Esq.
*Monmouthshire	{ George Appleton Wallis, of 2, Philpot Place, Philpot Lane
*Newcastle-upon-Tyne ..	Thomas Brown, of Ebbw Vale, Monmouth, Esq.
Norfolk	John Gibson, of Newcastle-on-Tyne, Esq.
Northamptonshire	Benjamin Bond Cabbell, of Cromer Hall, Cromer, Esq. M. P. ..
Northumberland	The Right Hon. The Lord Henley, of Waterford Hall
*Norwich, City of	Widdrington, of Newton, Northumberland, Esq.
Nottinghamshire	Henry Birkbeck, of Norwich, Esq.
*Nottingham, Town of ..	Samuel Bagnall Wild, of Costock, Esq.
Oxfordshire	Anthony John Mundella, of Nottingham, Esq.
Poole, Town of	John William Fane, of Wormsley, Esq.
Rutlandshire	Alfred Crabb, of Poole, Esq.
Shropshire	Robert Lee Bradshaw, of Tinwell, near Stamford, Esq.
Somersetshire	Robert Aglionby Slaney, of Hatton Grange, near Shifnal, and Walford Manor, Shrewsbury
*Southampton, Town of	James Curtis Somerville, of Dinder, Esq.
Staffordshire	Richard Coles, of Southampton, Esq.
*Suffolk	John Davenport, of Westwood Leek, Esq.
Surrey	Major Windsor Parker, of Clopton Hall, Rattlesden, Esq. ..
Sussex	Robert Goaling, of Botleys Park, Chertsey, Esq.
Warwickshire	John Day, of Newick, Esq.
Westmoreland	Wm. Chas. Alston, of Elmdon Hall, Warwick, Esq.
Wiltshire	John Wilson, of the Hows, Windermere, Esq.
*Worcestershire	Edmund Lewis Clutterbuck, of Hardenhuish Park, Chippenham, Esq. ..
*Worcester, City of	Edward Bearcroft, of Mere Hall, Esq.
	William Cowell, of Worcester, Esq.

DEPUTIES, AND AGENTS, FOR 1854.

—Office Hours, in Term, from 11 till 4; and in Vacation, from 11 till 3.

ENGLAND.

*Under-Sheriffs.**Deputies and Town Agents.*

Extra Eagles, jun., Bedford (A. U., G. T. Taylor, 18, Featherstone-bldgs., Holborn)	C. Arrowsmith, jun., 40, Devonshire-st., Queen-sq.
John Jackson Blandy, Reading	J. S. Gregory, 1, Bedford-row.
Rt. Douglas, Berwick-on-Tweed (A. U., Rt. Horne, Berwick-on-Tweed)	W. Pringle, 3, King's-road, Bedford-row.
William Ody Hare, Small-street, Bristol	Bridges, Mason, and Bridges, 23, Red-lion-square.
E. R. Baynes, Aylesbury (firm, Tindal & Baynes)	Charles Cooke, 7, Lincoln's-inn-fields.
George Frederick Maule, Huntingdon	G. L. P. Eyre, 1, John-street, Bedford-row.
Thomas Thorpe De Lasaux, Canterbury	James Fluker, 10, Symond's-inn.
Jos. Hibbert, Hyde (A. U., Jno. Hostage, Chester)	Chester, Toulmin, and Chester, 11, Staple-inn.
John Hostage, Chester	Chester, Toulmin, and Chester, 11, Staple-inn.
Thomas Pain, Dover	Kingsford and Co., 23, Essex-street.
J. E. Buller, 56, Lincoln's-inn-fields (P. Glubb, Liskeard)	J. E. Buller, 56, Lincoln's-inn-fields.
Edward Bowe Steel, Cockermouth	Bischoff, Coxe, and Bompas, 19, Coleman-street.
John James Simpson, Derby	Taylor and Collisason, 28, Great James-st., Bedford-row.
Thomas Edward Drake, Exeter	Buckley and Philbrick, 39, Basinghall-street.
Branch Fox, Beaumister	George Weller, 8, King's-road, Bedford-row.
William Emerson Wooler, Durham	Pollard and Hollings, Carlton-cham., 12, Regent-st.
W. T. Wade, Great Dunmow (A. U., Gepp and Velej, Chelmsford)	Hawkins, Bloxam, and Hawkins, 2, New Boswell-st.
Edwin Force, Deanery-pl., Cathedral-yard, Exeter	William Harris, 5 Stone-buildings, Lincoln's-inn.
Burrup and Son, 3, Berkeley-st., Gloucester	White and Sons, 11, Bedford-row.
Thomas Smith, Gloucester	Trinder and Eyre, 1, John-st., Bedford-row.
J. M. Carter (firm, Dunn and Co.), Alresford	Braikenridge and Sons, 16, Bartlett's-buildings.
Longmore, Sworder, and Longmore, Hertford	Hawkins, Bloxam, and Hawkins, 2, New Boswell-st.
Longmore, Sworder, and Longmore, Hertford	Geo. Playdell Wilton, 1, Raymond's-buildings.
T. Sale, Leominster (A. U., R. Underwood, Hereford)	G. L. P. Eyre, 1, John-street, Bedford-row.
G. F. Maule, Huntingdon	Palmer and Co., 24, Bedford-row.
W. H. Palmer, 24, Bedford-row	Hicks and Son, 5, Gray's-inn-square.
Thomas Holdes, jun., Hull	Ridsdale and Craddock, Gray's-inn
Wilson, Son, and Deacon, Preston	Chilton, Burton and Johnson, 7, Chancery-lane.
E. H. M. Clarke, Melton Mowbray (A. U., Bellairs and Eddowes, Leicester)	Baxter, Somerville, and Co., 48, Lincoln's-inn-flds.
John Philip Dyott, Lichfield	Taylor and Collisason, 28, Gt. James-st., Bedford-row.
M. P. Moore, Sleaford (A. U., H. Williams, Lincoln)	Taylor and Collisason, 28, Gt. James-st., Bedford-row.
Richard Mason, Lincoln	G. W. K. Potter, Secondaries' Office, 5, Basinghall-st.
Jas. Anderton, 20, New Bridge-st., Blackfriars	Burchell and Hall, Red-lion-square.
Charles Augustin Smith, Croom's Hill, Greenwich	Gregory and Sons, Clement's-inn.
W. W. S. J. Woodhouse, Abergavenny	Shield & Harwood, 10, Clement's-lane, Lombard-st.
John Fenwick, Newcastle-on-Tyne	Charles Blake, 2, Serjeant's-inn, Fleet-street.
T. M. Keith, Norwich (A. U., A. Taylor and Sons, Norwich)	A. Mo. A. Low, 65, Chancery-lane
John Becke, Northampton	Thomas Leadbitter, 7, Staple-inn.
Robert Leadbitter, Newcastle-on-Tyne	Bircham, Dalrymple, and Drake, 46, Parliament-st.
Arthur Dalrymple, Norwich	Taylor and Collisason, 28, Gt. James-st., Bedford-row.
H. B. Campbell, Nottingham (A. U., John Brewster, Nottingham)	Holme, Loftus, and Young, 10, New-inn.
Christopher Swann, Nottingham	Davies, Son, & Campbell, 17, Warwick-st., Regent-st.
John Marriott Davenport, Oxford	W. Skilbeck, 19, Southampton Buildings.
H. M. Aldridge, Poole	Bell, Brodrick, and Bell, Bew Church-yard.
Benjamin Adam, Oakham	H. S. Westmacott, 28, John-street, Bedford-row.
William Henry Cooper, Shrewsbury	Dynes and Harvey, 61, Lincoln's-inn-fields.
John Nicholletts, South Petherton	W. Braikenridge, 16, Bartlett's-buildings.
William Henry Newman, Southampton	White and Sons, 11, Bedford-row.
Robert William Hand, Stafford	T. H. Dixon, 5, New Boswell-court.
James Sparke, Bury St. Edmunds	Abbott, Jenkins, and Abbott, 8, New-inn.
C. J. Abbott, 8, New Inn (A. U., W. H. Smallpiece, Guildford)	Palmer and Co., 24, Bedford-row.
C. J. Palmer, 24, Bedford-row	Taylor & Collisason, 28, Gt. James-st., Bedford-row.
Henry Moor Griffiths, Birmingham	Thomas Johnston, 5, Raymond-buildings.
Thomas Harrison, Kendal	William Lewis, 6, Raymond-buildings.
West Awdry, Chippenham	Hall and Hunt, 11, New Boswell-court.
H. Beacroft, Droitwich (A. U., Hyde and Tymbs, Worcester)	George Becke, 44, Bedford-row.
William Samuel Price Hughes, Worcester	

ENGLAND.

Counties, &c.	Sheriffs.
Yorkshire	Henry Willoughby, of Birdall, near Maltou, Esq.
*York, City of	William Charles Anderson, of Stonegate, York, Esq.

NORTH WALES.

*Anglesey	Robert Brisco Owen, of Hafra, near Beaumaris, Esq.
*Carnarvonshire	Thomas Love Duncombe Jones Parry, of Madryn, Esq.
*Denbighshire	Richard Jones, of Bellan Place, Ruabon, Esq.
*Flintshire	Henry Raikes, of Llwynegryn, near Mold, Esq.
*Merionethshire	George Augustus Huddart, of Plasynpearbyn, Esq.
Montgomeryshire	John Michael Severne, of Wallop Hall, Esq.

SOUTH WALES.

Breconshire	John Powell, of Walton Mount, Brecon, Esq.
*Cardiganshire	Morgan Jones, of Penlan, Cardigan, Esq.
*Carmarthen, Borough of	Nathaniel Williams, of Llamas Street, Carmarthen, Esq.
*Carmarthenshire	John Jones, of Blaencoe, near Llandovery, Esq.
*Glamorganshire	William Llewellyn, of Court Colman, Bridgend, Esq.
*Haverfordwest, Town of	Henry Phelps Goode, of Haverfordwest, Esq.
*Pembrokeshire	The Hon. Rt. Fulke Greville, of Castle Hall, near Milford Haven
*Radnorshire	John Jones, of Cefynfaes Nanmel, near Rhayader, Esq.

POINTS IN COMMON LAW PRACTICE.

SERVICE OF PROCEEDINGS IN EJECTMENT.
—15 & 16 VICT. C. 76, s. 170.

A COPY of the declaration and notice in ejectment was affixed on the outer door of premises which were shut up and abandoned, another copy was served on the tenant's daughter at his last known place of abode, another copy on the house agent employed by him to let the premises, and another copy on his attorneys, who had acted for him in an action of debt, and in which a Judge's order had been drawn up by consent for payment of the debt and costs in both actions, and on default for liberty to proceed with the action of ejectment. The service was held sufficient. *Doe d. Laundy v. Roe*, 12 C. B. 451.

Under the 15 & 16 Vict. c. 76, s. 170, service of the writ of summons, which is substituted for the proceeding by declaration and notice, is to be made in the same manner as an ejectment has been heretofore served, or in such manner as the Court or a Judge shall order, and in case of vacant possession by posting a copy of the writ on the door of the dwelling-house or other conspicuous part of the property.

AFFIDAVIT OF SEARCH FOR APPEARANCE, WHEN TO BE SWORN.—15 & 16 VICT. C. 76, s. 24.

A motion for a *distringas* to compel the appearance of the defendant to a writ of summons was refused where the affidavit of his non-appearance had been sworn four days previously. *Drinkwater v. Mills*, 12 C. B. 452.

The proceeding by *distringas* to compel appearance is abolished by the 15 & 16 Vict. c. 76, s. 24, but search must still be made in order to obtain leave to proceed under s. 17. And see *Hooker v. Townsend*, 1 Hodges, 204; *Spence v. Barker*, 8 Dowl. P. C. 296.

JUDGMENT AS IN CASE OF NONSUIT.—AFFIDAVIT OF DEFAULT IN PROCEEDING TO TRY.

The affidavit in support of a motion for judgment as in case of nonsuit stated that issue was joined and notice of trial given, "but that the plaintiff did not proceed to trial of this cause" in pursuance thereof: *Held*, sufficient, and that the negating the fact of the plaintiff having since proceeded to trial should come from the plaintiff. *Edgar v. Halliday*, 1 L. M. & P. 367, has been expressly overruled. *Blackman v. Asplin*, 12 C. B. 453.

Judgment as in case of nonsuit is repealed by the 15 & 16 Vict. c. 76, s. 100, and the

ENGLAND.

Under-Sheriffs.

William Gray, York
Edward Richard Anderson, Stonegate, York ..

Deputies and Town Agents.

Williamson, Hill, and Williamson, 10, Great James-
street, Bedford-row.
Samuel Jackson, 25, Bedford-row.

NORTH WALES.

Thomas Owen, Llangafui, Anglesey
Henry Seymour Westmacott, Pwllheli
Edw. Williams, Oswestry (A. U., Rd. Williams,
Vale-street, Denbigh
Arthur Troughton Roberts, Mold
Griffith Williams, Dolgelly
Robert Devereux Harrison, Welchpool

Abbott, Jenkins, and Abbott, 8, New-inn.
H. S. Westmacott, 28, John-st., Bedford-row.
James William Dean, Bloomsbury-square.
Nathaniel Charles Milne, Temple.
Charles Wilkin, 10, Tokenhouse-yard.
George Faulkner, 1, Bedford-row.

SOUTH WALES.

Henry Maybery, Brecon
Thomas Morgan, Cardigan
Richard Aubrey Thomas, Carmarthen
Charles Bishop, Llandovery
David Randall, Neath
William Davis, Haverfordwest
James Summers, Haverfordwest
Richard Wood, Rhayader

Gregory and Sons, Clement's-inn.
Trinder and Eyre, 1, John-st., Bedford-row.
Williams, Hett, and Bowpan, 14, Gresham-st.
Gregory and Sons, Clement's-inn.
Holme, Loftus, and Young, 10, New-inn.
Hastings, Best, and Smith, 3, Southampton-street,
Bloomsbury
T. L. Marriott, 1, Lancaster-place, Strand.
Meredith and Co., 8, New-square, Lincoln'-inn.

practice with respect to judgment for default in not proceeding to trial, is either, 1st, to obtain a rule under s. 99, for the costs of the day, and which may be drawn up on *affidavit* without motion; or 2nd, to give the 20 days' notice under s. 101, to the plaintiff to try, and after suggesting on the record his default, to sign judgment for costs; or 3rd, to take down the cause for trial by proviso, under s. 116.

the sheriff, he appeared by counsel, and the jury only gave nominal damages: *Held*, that the plaintiff was, notwithstanding, entitled to his full costs under the 13 & 14 Vict. c. 61, ss. 11, 12. *Glynne v. Roberts*, 9 Exch. R. 253.

LAW OF COSTS.

UNDER 8 & 9 VICT. C. 18, s. 126.—“FULL COSTS AND CHARGES.”—ON COMPANY'S DISPUTING RIGHT TO ESTATE.

“FULL costs and charges,” in the Lands' Clauses' Consolidation Act, 8 & 9 Vict. c. 18, s. 126, payable by the promoters of an undertaking, when the right of any estate, interest, or charge shall have been disputed by them and determined in favour of the party claiming the same,—construed to mean costs as between attorney and client. *Doe dem. Hyde v. Mayor, &c., of Manchester*, 12 C. B. 474.

UNDER 13 & 14 VICT. C. 61, ON JUDGMENT BY DEFAULT.

The defendant, in an action of assumpsit to recover damages for the improper cultivation of a farm, allowed judgment to go by default, but upon the trial of the writ of inquiry before

LAW INSURANCE SOCIETIES.

To the Editor of the Legal Observer.

THE LAW UNION.

SIR,—It has often been a matter of observation among solicitors, that in the Profession of the Law there exist many objectionable monopolies.

A young practitioner, whatever may be his ability or acquirements, stands but little chance,—he finds every door to practice shut against him—while the great firms, through the aid of powerful and influential companies, of which they have been fortunate enough to become solicitors, have the exclusive use of large capital, and so draw to themselves all the business that the patronage of immense funds virtually commands. I have frequently thought of this as a great grievance and unfair advantage, especially when it is considered how large a portion of those funds is supplied by the industry of the general body of solicitors, to be afterwards monopolised by a score or more fortunate members of the Profession.

I freely admit that I could never find out the practical remedy for this evil, but I think it has been discovered by a distinguished solicitor, Sir William Foster, Bart., of Norwich. I learn from the resolutions passed at a meeting, of which he was the chairman (and a copy of

which I received by post), that it is contemplated to establish a company by the name of "The Law Union Fire and Life Insurance Company," and that every respectable solicitor being a shareholder, will, under proper regulations, be allowed to act for the company in transacting any approved mortgaged securities introduced by him. Surely this is quite fair and just, and must be a great boon to the Profession, and I in common with hundreds shall look forward with the greatest interest for the prospectus.

A SOLICITOR.

[We refer our Correspondent to the Prospectus, which will be found in our Advertising columns, and we must admit that it is well worthy of the attention of solicitors.—ED.]

QUERIES OF ARTICLED CLERKS.

MODE OF SERVICE.—HOLDING PUBLIC OFFICES.

AN articled clerk holds on his own account the several offices of clerk to the board of guardians, superintendent registrar, and agent to an insurance office. He devotes most of his time to his master's business, but attends the meetings of the board of guardians. Will this be a good service under articles? X.

[The Examiners, we believe, do not object to articled clerks holding offices usually filled by attorneys, and the clerkship to a board of guardians and superintendent registrar are of that class. An insurance agency may be doubtful, though often held by solicitors. However, the service would be rendered perfect by continuing with the attorney for such length of time as may have been occupied in other than professional business.—ED.]

INTERVAL IN SERVICE.—MILITIA OFFICER.

Would an articled clerk prejudice his admission as an attorney by accepting a commission in the militia, where, with his master's positive and express consent, joining the regiment during the three weeks' period of training? Would it be advisable for the clerk to serve a period at the termination of his articles equal to the time he may be thus engaged? G.

[The Court would probably consider the service to be sufficient, if the absence in each year were only three weeks, on the ground that the attorney may permit a few weeks' holiday by way of relaxation; and at all events the interval might be made up by subsequent service.—ED.]

SELECTIONS FROM CORRESPONDENCE.

SCOTCH LAW OF MARRIAGE AND DIVORCE.

IF "A Scotch Advocate," in your Number of 25th February, had obliged your readers by stating the Law as it at present exists on this subject, he would have conferred an obligation on them. I have little doubt, like that of England, of its being in a very unsatisfactory state.

I have no pretension to the knowledge of Scotch Law, but I do know that a gentleman of large landed estate, not many miles from the "modern Athens," acted as is stated in your Number of February 18th, and that, under the threat there mentioned, his daughter was induced actually to sell her own estate to satisfy the father's debts; but whether she acted under legal advice or not I am altogether ignorant. She was, it seems, grossly deceived by the misrepresentations of her father, and suffered in consequence. CIVIS.

LAW OF DISINHERISON.

In conversing lately with a French advocate, he expressed the utmost astonishment at our barbarous law which could enable a father totally to disinherit his child; he designated this power as the most cruel and oppressive that can be imagined.

A recent instance has occurred in my practice where a father, possessed of considerable landed estates in three counties, leaving the whole to a daughter, charged with an inconsiderable legacy to another daughter, to the total exclusion of the son, a barrister.

I am by no means an advocate of the French law, which gives two shares to the eldest child and the remainder to the others in equal proportions, but I trust that a law will pass to prohibit a father from acting in so cruel and unnatural a manner as I have mentioned. A.

NOTES OF THE WEEK.

LECTURES AT THE LAW SOCIETY.

MR. WILSON, the eminent conveyancer, met his class in the Hall of the Law Society, last Wednesday, for the purpose of answering any doubts which might be suggested arising out of his lectures. The class is upwards of 200, and a considerable proportion attended on this occasion. The points of inquiry which were put by the students, did them much credit: they were important, and every one of them drew forth a clear and masterly exposition of the state of the Law and the Practice of Conveyancers on the several questions brought forward. Errors of practice were noticed, and many doubts in the Law satisfactorily explained.

Several of the members of the Society were present, who appeared much interested in the discussion, and the meeting, the first of the kind, must be considered as highly satisfactory.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

In re Blakeley, ex parte Harvey and another; ex parte Springfield. Jan. 27, 30, 31; Feb. 28, 1845.

BANKRUPT.—PROOF AGAINST ESTATE ON JOINT PROMISSORY NOTE.—DEED OF ARRANGEMENT.—RELEASE OF SURETY.

A bankrupt had joined in promissory notes with his son in respect of debts due from the latter to the appellants, and it appeared that afterwards the son assigned his property to them in trust for the benefit of his creditors: Held, allowing an appeal from Mr. Commissioner Fane, that such deed did not operate as a release of the father as surety, and the appellants' claim in respect of the notes was admitted against the father's estate.

THESE were appeals from the decision of Mr. Commissioner Fane disallowing the claims of proof of Messrs. Harvey and Hudson and Messrs. Springfield against the estate of the defendant, a silk mercer at Norwich, in respect of debts as surety for his son, a bankrupt, on their joint promissory notes. It appeared that Mr. Harvey had executed a deed in March, 1853, whereby the son had assigned his property to Messrs. Harvey and Hudson and Messrs. Springfield in trust for the benefit of his creditors, and the Commissioner had disallowed their claims on the ground such deed operated as a release.

Swanston, Rolt, and Bazalgette in support; *Daniel and Aspland* for the assignees, contra.

Cur. ad. vult.

The Lords Justices said, that the evidence, which had not been adduced before the Commissioner, was very conflicting as to whether the father had assented to the execution of the deed. The proposition was reasonable in itself, and on the materials before the Court must be decided to be true. The son had been made bankrupt on the deed, and the arrangement was never completed nor executed by any other creditors, and it was clear the petitioners would not have executed if the father had been released from the promissory note. It ought not, therefore, to be set up against their claim, and the appeal would accordingly be allowed.

Wood and another v. Midgley. Feb. 28, 1854.

CONTRACT FOR PURCHASE OF HOUSE.—PAYMENT OF DEPOSIT.—MEMORANDUM IN WRITING.—STATUTE OF FRAUDS.—SPECIFIC PERFORMANCE.

The defendant paid a deposit of 50l. to the plaintiffs' auctioneer and agent, who signed a memorandum stating it was in part payment of the purchase-money of a public-house—the terms to be expressed in an agreement to be signed when prepared. On the defendant's refusal to sign the agree-

ment, held, in a suit for the specific performance of the contract, and allowing a demurrer on appeal from Vice-Chancellor Stuart, that there was no sufficient contract in writing, in compliance with the requirements of the Statute of Frauds.

THIS was an appeal from the decision of Vice-Chancellor Stuart, overruling a demurrer setting up the Statute of Frauds to this bill for the specific performance of a contract entered into in May, 1853, by the defendant to purchase a public-house at Bermondsey for 1,000l. It appeared that the defendant had agreed to the terms of the contract for the purchase, and had paid a deposit of 50l. to the plaintiffs' auctioneer and agent, who signed a memorandum stating it was in part payment of the purchase-money,—the terms to be expressed in an agreement to be signed when prepared, but that he had subsequently refused to sign the contract.

Malins and Cairns in support; *W. D. Lewis*, contra.

The Lords Justices said, the Statute of Frauds required that a person purchasing, or intending to purchase, real estate, should not be bound until he had assented in writing to the completion of the contract, and that the demurrer must therefore be allowed, with costs, and the decision of the Court below be reversed.

Master of the Rolls.

Hutchin v. Morris. March 2, 1854.

SALE OF PROPERTY BY AGENT OF TRUSTEES FOR SALE.—PURCHASE BY AGENT AND SUBSEQUENT SALE AT ADVANCED PRICE.

The father of infant defendants, who were entitled to a moiety of certain property with the plaintiffs, devised in trust for sale, had prevailed on the trustees and the plaintiffs' mother that he should conduct the sale, and he had informed a person who had applied in consequence of an advertisement that the property would not be sold for the sum he offered. He afterwards purchased for a less sum, and then negotiated a sale to such person for 1,000l. more than he gave: Held, that he was liable as a trustee to account for the whole of the purchase-money.

THE trustees for sale under the will of a testatrix of certain freehold and leasehold property in Monmouthshire held in trust for the plaintiffs and the defendants, had advertised the sale accordingly, and received in reply an application from Mr. Smedley, who eventually offered to purchase for 2,800l. The defendants' father then obtained from the plaintiffs' mother and the trustees authority to manage the sale, and he stated to Mr. Smedley that the

property would not be sold at the price offered, and he informed the trustees and the plaintiffs' mother that the negotiations had gone off. He afterwards, however, obtained the consent of the trustees for a purchase to himself for 2,600*l.*, and the day after he had informed Mr. Smedley that the price required was 3,600*l.*, at which Mr. Smedley agreed to purchase and had accordingly paid. This suit was instituted on behalf of the infant plaintiffs for a declaration that the whole 3,600*l.* should be paid to the trustees.

Roupell and Fooks in support; *R. Palmer, Cox, and Jessel* for the defendants; *Karslake* for the trustees.

The Master of the Rolls said, that the defendants' father was acting as trustee for the sale of the property, and that there must be a decree for the plaintiffs as asked for.

Vice-Chancellor Kindersley.

Cox v. Middleton. Feb. 20, 1854.

SPECIFIC PERFORMANCE OF CONTRACT.— DESCRIPTION OF PLAINTIFF'S INTEREST.— —STATUTE OF FRAUDS.

*It appeared in a suit for specific performance, that the contract was written in pencil in the plaintiff's pocket-book, and attested by a witness, in the following words:—"Mr. Middleton agrees to pay 625*l.* for the cottage and stable, Mr. Cox paying the expenses of the lease held by Mr. Smith,"—the plaintiff having represented the house to be substantially and well built on a previous negotiation in reference to the property which proved abortive: Held, that the memorandum did not contain a sufficient description of the plaintiff's interest in the property within the Statute of Frauds, and the bill was dismissed with costs, the representation as to the state of the house being false.*

It appeared that the defendant had entered into negotiations with the plaintiff for the purchase for 600*l.* of a leasehold house and stable in Wellington Square, Chelsea, but that he had failed to attend the appointment to execute the lease, and that his solicitor had, in answer to a letter from the plaintiff's threatening proceedings, stated his intention to appear. The parties afterwards met in a street in Chelsea, when the defendant signed the following memorandum in pencil in the plaintiff's pocket-book:—"Mr. Middleton agrees to pay 625*l.* for the cottage and stable, Mr. Cox paying the expenses of the lease held by Mr. Smith;" and a person named John Newman attested the same. It also appeared that the plaintiff had represented the premises as being substantially and well built, but on a survey this was ascertained not to be the case. The defendant then refused to complete, and this bill was filed.

Elmsley and Southgate for the plaintiff; *Chandless and Haldane* for the defendant.

The Vice-Chancellor said, that there was not

a sufficient description of the plaintiff's interest in the property within the Statute of Frauds, and besides, the misrepresentation of the plaintiff as to the house being substantially and well built did not entitle him to relief in equity. The bill would be dismissed, with costs.

In re Meen's Trust. March 3, 1854.

LEGACY.—MISDESCRIPTION OF LEGATEE.— EVIDENCE OF DEATH OF LEGATEE.— PAYMENT TO REPRESENTATIVES.

Bequest of legacy to George W., son of the testatrix's brother Thomas. It appeared that Thomas had no children, but that George W. was the son of her brother John: Held, that he was entitled.

George survived the testatrix, and was drowned off Calcutta, as appeared by the evidence of two sailors who were with him at the time: an order was made for payment out of the legacy, which had been paid in under the 10 & 11 Vict. c. 96, to George's representatives.

A TESTATRIX, by her will, gave a legacy of 500*l.* to George Wheeler, son of her brother Thomas Wheeler, but it appeared that George Wheeler was the son of her brother John, and not of Thomas, who had no children. It appeared also, that George survived the testatrix, but that, as was proved by the evidence of two sailors who were with him at the time, he was drowned off Calcutta. This petition was now presented by his representatives for payment of the sum which had been paid in under the 10 & 11 Vict. c. 96.

Baily and Walford in support; *Hitchcock* for the trustees.

The Vice-Chancellor made the order as prayed—the trustees' costs to come out of the fund.

Vice-Chancellor Stuart.

Barrett and another v. Ring and others. Jan. 23, 1854.

SPECIFIC PERFORMANCE OF CONTRACT BY TRUSTEES OF TURNPIKE ROAD FOR SALE TO LESSORS OF ADJOINING LAND.—JUS TERTII.

The trustees of a turnpike road contracted for the sale to the lessees of the adjoining property, of a slip of land next to the highway, under the 3 Geo. 4, c. 126. It appeared that the lessors claimed the right to purchase under s. 89: Held, that the trustees could not set up this jus tertii, in answer to a suit for the specific performance of such contract—the plaintiffs accepting the title.

THIS was a suit for the specific performance of an agreement, dated August, 1852, and entered into by the trustees of the Junction Turnpike Road from Kentish Town to Upper Holloway, appointed under the 3 & 4 Wm. 4, c. c., for the sale to the plaintiffs, who were lessees under the Corporation of the Sons of the

Clergy of the adjoining land, of a slip of land between the same and the road; and upon which it appeared that the plaintiffs had built. The Corporation of the Sons of the Clergy claimed to have the slip of land in question conveyed to them, under the 3 Geo. 4, c. 126, s. 89.

Malins and *W. D. Lewis* for the plaintiffs; *Bovill* for the defendants.

The Vice-Chancellor said, that it was not competent to the defendants to set up the *jus tertii* in discharge of the contract, and the plaintiffs were satisfied with the title, and had agreed to accept such title only as the trustees could convey. There must be a decree with costs for a specific performance.

Diplock v. Hammond; Poor Law Guardians of St. Mary, Newington, v. Same. Feb. 16, 1854.

INTERPLEADER BILL.—DEDUCTION CLAIMED BY PLAINTIFFS.—EQUITABLE ASSIGNMENT OF DEBT.

The defendant, who had contracted with the guardians to build a workhouse, had authorised the payment of the amount to be paid to D., who had advanced the same, and notice was given to the guardians. The defendant afterwards assigned to B. The guardians then filed an interpleader bill, and claimed to deduct certain payments to the defendant on account,—the sum having been paid into Court. Their bill was dismissed with costs, and a declaration was made on D.'s bill of the validity of the assignment, with a decree for an account.

It appeared that the defendant in these suits having been employed to erect a new workhouse for the above parish for 365*l.*, to be paid on its completion, had authorised the payment of the amount to Mr. Diplock, who had advanced the same, and at the same time he gave him a stamped receipt. Notice was given of this authority to the clerk to the board of guardians, but the defendant shortly afterwards gave them notice not to pay the amount, as he had assigned to a Mr. Alfred Booth. On the works being completed, the sum was paid into Court, and this interpleader bill was filed, but claiming to deduct two payments on account of 20*l.* each to the defendant. Mr. Diplock had also filed his bill for a declaration that the assignment to him was valid, and for payment by the guardians, and for an account.

Malins and *J. H. Palmer* for Mr. Diplock; *Craig* and *Welford* for the assignee, Mr. Booth, on the ground the memorandum required a stamp; *Swanston* and *Collins* for the poor law guardians; *Speed* for the defendant.

The Vice-Chancellor said, that as the letter was an order to pay the whole fund, and was therefore clearly an assignment, it was liable to a stamp. As to the interpleader bill, the guardians claimed to make a deduction from the amount, which was fatal, and it must be dismissed with costs. On the other bill, a declaration would be made of the validity of the

assignment to Diplock, with a decree for an account—costs to be reserved.

In re Dawson. Feb. 27; March 2, 4, 1854.

GUARDIANSHIP OF CHILD BORN IN AMERICA OF ENGLISH FATHER AND AMERICAN MOTHER.

An infant was born of an English father, who was naturalised in America, and of an American mother, and her fortune was in the State of New York, the surrogate of which had appointed a maternal aunt as her guardian, but after another State had appointed a paternal uncle. According to the American law, the power of a guardian did not extend beyond the State in which the guardian was appointed. The child was brought to this country. On petitions by the paternal uncle and his sister, and by the maternal aunt: Held, that it was proper they should be associated together as guardians, and a reference was directed at Chambers to prepare a scheme.

It appeared that the surrogate of Baltimore, in Maryland, U. S., had appointed as guardian the paternal uncle of an infant, whose mother was an American, and whose father, although a British subject, had become a naturalised citizen of the United States. The paternal aunt, with whom the infant had lived since her mother's death, was, however, afterwards appointed guardian by the surrogate of the Court of New York, but on her discovering the previous appointment she repudiated the guardianship, and Miss Jay, a maternal aunt, and one of her godmothers, then obtained an injunction from the Supreme Court of New York to prevent the infant being taken out of the country, but before it could be served she had left for England. The Supreme Court had afterwards appointed Miss Jay as guardian, and she presented this petition for her appointment as guardian, with a view to take the child back to America, but submitting to any terms as to visiting this country. There was a cross petition also presented for the appointment of a paternal uncle and his sister, who was appointed by the New York Court in the first instance, as guardians in order to educate the child in this country.

Wigram and *Lawford* in support of the petition; *Bacon* and *Cairns* of the cross-petition.

The Vice-Chancellor said, that the whole or greater part of the infant's fortune was in the state of New York, but her father was a British subject and naturalised in the United States, and had married an American. The child was, nevertheless, a subject of this country, was connected in equal degrees with both, and had resided for six years with her paternal aunt in New York. It was the duty of this Court to make an arrangement as would best tend to maintain her connexion with both classes of relations. It appeared that the guardians appointed by the New York surrogate had only

a local right in that State, which could not be exercised in other States (2 Kent's Com. 227), while two maternal uncles were beyond his jurisdiction as they resided in the county of West Chester, and at Washington, in Virginia, and besides another guardian had been appointed by the Maryland State. These conflicting jurisdictions would doubtless produce some practical inconvenience, and it was for the infant's benefit that some scheme should be arranged so as to secure for her the advantage of her connexion with her American as well as her English relations, who had been treated as foreigners and had had no voice before the New York surrogate. It would therefore be proper to associate the paternal uncle and his sister with the maternal aunt, and inquiries would be directed at Chambers for the purpose in order to a scheme for the residence, maintenance, and education of the infant.

Vice-Chancellor Haad.

Bernasconi v. Atkinson. Jan. 14, 18, 1854.

LEGACY.—MISDESCRIPTION OF LEGATEE'S NAME IN WILL.—EXTRINSIC EVIDENCE.

A testator gave a legacy to his first cousin, Anne B., daughter of his late uncle, Peter B., and the residue between his sister and his first cousin, Vincent B., son of his late uncle, Peter B. It appeared that the plaintiff, George Vincent B., was on terms of great intimacy with the testator, and was commonly known as Vincent B., but his father's name was Joseph Vincent B. It further appeared that the uncle, Peter B., had two sons, the defendant, Frederick, and Peter Alexander, who had been abroad for 11 years, and neither of whom were intimate with the testator: Held, that the plaintiff was entitled, and not the defendant.

THE testator, by his will, dated in April, 1852, bequeathed a legacy of 2,000*l.* to his first cousin, Anne Bernasconi, daughter of his late uncle, Peter Bernasconi, and the residue in trust for his sister, Jane Anne Blackwell, and his first cousin Vincent Bernasconi, son of his late uncle, Peter Bernasconi, to be equally divided between them as tenants in common. It appeared that the names of the sons of the uncle, Peter Bernasconi, were the defendant Frederick and Peter Alexander, the latter being resident in Russia, and not having been heard of for 11 years, but with neither of whom was the testator intimate. The plaintiff, who claimed to be entitled, was called George Vincent Bernasconi, and was commonly known as Vincent Bernasconi, and was on terms of intimacy with the testator, but his father's name was Joseph Vincent Bernasconi.

Rollt and C. Chapman Barber for the plaintiff; *Tripp* for the defendant; *Bacon, W. M. James, Freeling, and Dawney* for the testator's sister, who was the heiress-at-law and sole next of kin, and the widow, contended there was an intestacy as to the moiety.

The Vice-Chancellor said, that the only case

in which extrinsic evidence could be admitted to show the testator's intention was where the description was equally applicable to two different persons. It was clear the testator intended to make a gift, and the plaintiff was entitled in preference to the defendant,—the costs of all parties to come out of the estate.

Long v. Storie. Jan. 19, 1854.

FORECLOSURE SUIT.—DEATH OF MORTGAGOR.—LEAVE TO PROCEED WITHOUT REPRESENTATIVE TO ESTATE.

Eight mortgages were created on the same day, and by the decree in a foreclosure suit, one right of redemption was only given in respect thereof. On the death of one of the mortgagees, an application was granted for leave to proceed in the absence of any representative to his estate.

THIS was an application for leave to proceed with this foreclosure suit in the absence of any representative of the estate of one of eight mortgagees, under deeds executed on the same day, and to whom only one right of redemption was given by the decree therein made. It appeared that the next of kin refused to administer, and that all the other creditors also declined, and that an application for the appointment of a person to represent the estate had been directed to stand over (reported ante, p. 165), in order to ascertain whether any of the creditors would consent.

Bazalgette in support.

The Vice-Chancellor granted the application.

Lowe v. Thomas. Feb. 14, 15, 1854.

WILL.—CONSTRUCTION.—BEQUEST OF "MONEY."—STOCK IN THE FUNDS AND IN SOUTH SEA COMPANY.

A bequest of "money" held not to include stock in the funds and in the South Sea Company, where the will did not clearly show a different intention.

THE testatrix, by her will, gave the whole of her money to her brother for life, and at his death she directed it to be divided between her two nieces, with benefit of survivorship. A question arose, whether stock in the funds and in the South Sea Company were included in the bequest.

Rollt and Hardy for the plaintiffs; *Walker, Chandless, C. Hall, L. Mackeson, and Fischer*, for other parties.

The Vice-Chancellor said, as the context did not clearly show a different intention, the word money must be construed in its limited meaning, and did not therefore include stock.

Court of Queen's Bench.

Regina v. Bennett and others. Jan. 25, 1854.

PAUPER.—EXPENSES OF WHERE IRREMOVABLE.—CHARGE ON UNION COMMON FUND.

Held, quashing the allowance by the Poor Law auditor of payments out of the common union fund for the relief of certain paupers,

that the 9 & 10 Vict. c. 66, s. 1, only renders such paupers irremovable as have a known settlement to which, independently of the Act, they would be liable to be removed, and that the 11 & 12 Vict. c. 110, s. 3, only applies to the cases falling within that Act.

THIS was a rule nisi to quash the allowance by the Poor Law auditor of the Gloucestershire and Monmouthshire district, of certain sums charged in the accounts of the Westbury-on-Severn Union to the union common fund, and for the payment thereof by the township of East Dean. It appeared that the sums in question had been paid for the relief of paupers who were born in the extra-parochial parts of the Forest of Dean, which was by the 5 & 6 Vict. c. 48, divided into the townships of East and West Dean, and added to the Westbury-on-Severn Union, but who had acquired no settlement therein or elsewhere, and had become chargeable to the township of East Dean. The auditor had allowed the charge on the common fund of the union by virtue of the 11 & 12 Vict. c. 110, s. 3, upon the ground that the paupers, having resided for more than five years in the township, were irremovable under the 9 & 10 Vict. c. 66, s. 1.

Alexander and Phipson showed cause against the rule; Pashley and Dowdeswell, in support, were not called on.

The Court said, that the 9 & 10 Vict. c. 66, s. 1, only rendered such paupers irremovable as had a known settlement to which, independently of the Act, they would have been liable to be removed, and that the 11 & 12 Vict. c. 110, s. 3, was only applicable to the cases falling within that Act, and did not extend to the paupers now in question, and the rule was accordingly made absolute.

Regina v. Overseers of Manchester. Jan. 25, 1854.

POOR-RATE. — NON-LIABILITY OF COUNTY COURT HOUSE TO.

Held, on special case from the Sessions that the building used exclusively for the purpose of the County Court under the 9 & 10 Vict. c. 95, is not liable to be rated to the relief of the poor under the 43 Eliz. c. 2, s. 1.

THIS was a case from the Manchester Quarter Sessions, upon the allowance of the appeal on behalf of the treasurer of the Manchester County Court from a rate to the relief of the poor, of the building which was used exclusively for the purpose of the County Court under the 9 & 10 Vict. c. 95.

Cowling against the rate, which was supported by Pashley.

The Court said, that as there was no pecuniary benefit connected with the use or occupation of the building by the treasurer or any person whom he represented, it was not rateable under the 43 Eliz. c. 2, s. 1, and the order of Sessions must be confirmed.

Regina (ex parte Norwich Local Board of Health) v. Elmer. Jan. 21; Feb. 18, 1854.

PUBLIC HEALTH ACT. — POWER OF LOCAL BOARD TO RATE IN RESPECT OF OLD DEBTS UNDER LOCAL ACTS.

Held, that the local board of health of Norwich were empowered to make a separate rate on a parish under the 11 & 12 Vict. c. 63, towards defraying the expenses incurred by the old Commissioners under the local acts 46 Geo. 3, c. lxvii., and 6 Geo. 4, c. lxxviii., for improvements in such parish.

FROM this special case for the opinion of the Court, it appeared that the parish of St. Mary in the Marsh was outside the limits of the ancient city of Norwich, but for parliamentary and municipal purposes and under the Public Health Act (11 & 12 Vict. c. 63), was united to the city.

By the 46 Geo. 3, c. lxvii. (local), commissioners were appointed for paving, lighting, and improving the city of Norwich, and they were empowered to raise money by rates to carry the Act into effect. This Act was amended by the 6 Geo. 4, c. lxxviii., which continued (s. 1) all the powers of the former Act, except as thereby altered, and the power of rating was regulated by ss. 12, 13. By the provisional order of the General Board of Health applicable to Norwich, the 46 Geo. 3, c. lxvii., was altogether repealed, but the 6 Geo. 4, c. lxxviii. ss. 1, 12, 13, were continued in force, and the powers of the Commissioners were transferred to the local board of health. It also appeared that considerable liabilities had been incurred by the old Commissioners under the local acts, and the question now arose, whether the local board of health were empowered to rate the old district separately from the parish of St. Mary, added under the Public Health Act, to pay off old debts.

Bramwell and Bovill in support of the affirmative; Attorney-General and Palmer, contra. Cur. ad. vult.

The Court said, that the local board had power to make a distinct rate towards defraying the expenses authorised by the 11 & 12 Vict. c. 63, which had repealed in effect the local acts, except so far as related to the powers for the compulsory purchase.

Court of Common Pleas.

Caballero v. Slater. Jan. 20, 1854.

ACTION ON AGREEMENT INTER PARTES WITH GUARANTEE OF THIRD PERSON FOR PAYMENT OF RENT.—DEMURRER.

In an agreement between the plaintiff and T., to let a house to T., the defendant, with another person, agreed to see the rent paid: Held, overruling a demurrer, that on non-payment of the rent the letting of the house was a sufficient consideration to enable the plaintiff to sue the defendant for such rent.

THIS was an action to recover from the defendant the rent due in respect of a house let

to a Mr. Thompson, under an agreement made between the plaintiff and Mr. Thompson, and in which the defendant, although not a party thereto, had, together with another person, agreed to see the rent paid. The declaration alleged, that the agreement was entered into between the plaintiff and the defendant, and then proceeded to set it out as above. The defendant demurred.

Edwards in support.

The Court (without calling on *John A. Russell*, contra), said, that the consideration for the defendant's joining was to let the house to Mr. Thompson, and the demurrer was accordingly overruled.

Court of Exchequer.

Truscott v. Latour. Jan. 31, 1854.

COMMON LAW PROCEDURE ACT. — NOTICE TO TRY UNDER S. 101.—SETTING ASIDE WHERE DEFENDANT INSOLVENT.

A rule was made absolute to set aside the notice by the defendant, under the 15 & 16 Vict. c. 76, s. 101, to the plaintiff to bring on the issue in an action for trial, where it appeared that the defendant was in prison for debt, and had stated his intention to take the benefit of the Insolvent Debtors' Act, and not to pay any of his creditors.

A RULE nisi had been obtained in this action to set aside the notice which had been given by the defendant, under the 15 & 16 Vict. c. 76, s. 101, to the plaintiff to bring on the issue to be tried at the first London Sittings in Hilary Term last. It appeared that the defendant was in prison for debt, and had stated his intention to take the benefit of the Insolvent Debtors' Act, and not to pay any of his creditors.

Wordsworth showed cause against the rule; *Pearson*, in support, was not called on.

The Court said, that the rule must be made absolute, as the defendant declined to have a *set processus* entered.

Metcyn v. Bolton. Jan. 17; Feb. 23, 1854.

ACTION BY COMMERCIAL TRAVELLER FOR DISMISSAL. — LOSS OF TRAVELLING EXPENSES.—NEW TRIAL.

In an action by a commercial traveller to recover for his wrongful dismissal, the declaration alleged that the plaintiff was employed at a salary of 150l. a year, with 6l. a week for travelling expenses, and his dismissal before the year expired. The defendant pleaded non assumpsit, and on the trial it appeared to be the custom of the trade to give three months' notice of dismissal. A verdict was given for the loss of travelling expenses as well as of salary: A rule was made absolute for a new trial.

A RULE nisi had been granted to set aside the verdict for the plaintiff and for a new trial, or to enter a nonsuit, in this action by a commercial traveller to recover for his wrongful dismissal by the defendant. The declaration

alleged, that the plaintiff was engaged at a salary of 150l. a year, with 6l. a week for travelling allowances, and that he had been dismissed before the year expired. The defendant pleaded non assumpsit. On the trial before *Martin, B.*, it appeared that it was the custom of the trade on such contracts for three months' notice to be given of dismissal. The jury, by direction of the learned Judge, awarded damages for the loss of travelling allowances as well as of the salary.

Prentice showed cause against the rule on the ground the custom should have been pleaded, and could not be taken advantage of on the general issue.

T. Jones in support.

Cur. ad. vok.

The Court said, the rule would be made absolute for a new trial.

Oatley v. Basendale. Feb. 1, 2, 23, 1854.

COMMON CARRIERS. — LIABILITY FOR INDIRECT DAMAGES ON NON-DELIVERY OF GOODS.

The plaintiff sent by the defendants, common carriers, a broken mill shaft to be conveyed to Greenwich for repair, and on its non-delivery within a reasonable time, they brought an action to recover damages for the loss sustained by them in their business as millers: Held, that the defendants were not liable for other than such damages as were naturally consequent on the breach of contract, and a rule was made absolute for a new trial.

THIS was an action to recover damages from the defendants, who were carriers, for the non-delivery, within a reasonable time, of a broken mill shaft which had been entrusted to them to carry from Gloucester to the engineers at Greenwich, whereby the plaintiff had sustained loss by the stoppage of their trade as millers. On the trial before *Crompton, J.*, at Gloucester, the plaintiff obtained a verdict for 25l., *ultra* a similar sum which had been paid into Court. This rule had been obtained on November 5, for a new trial, on the ground the damages sought to be recovered were too remote, as the defendants were not informed of the use to be made, or the value, of the shaft intrusted to them.

Keating and *Dowdswell* showed cause against the rule, which was supported by *Whateley, Willes*, and *Phipson*.

Cur. ad. vok.

The Court said, the true principle on which damages in these cases should be estimated was, that where a party had entered into and broken a contract, he should be answerable for those damages only which naturally flowed from and were consequent on the breach. The defendants were not aware of the plaintiff's requiring the shaft in order to resume his work, and they were not therefore liable. The rule would therefore be made absolute for a new trial.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, MARCH 18, 1854.  
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SECOND COMMON LAW PROCEDURE BILL.

THE Bill for the farther amendment of the process, practice, and mode of pleading and enlarging the jurisdiction of the Superior Courts of Common Law at Westminster, has just been printed. In submitting its provisions to our readers, we shall take the liberty of arranging them in a somewhat different order from the Bill itself. It will be more convenient in the 1st place to select the clauses relating to proceedings *before* trial; 2nd. Those which apply to the rules of evidence; 3rd. Proceedings on motions and summonses; 4th. The trial with or without a jury; 5th. Special cases; 6th. New trials, writs of error, and appeals; 7th. Executions and foreign attachment; 8th. Mandamus and prohibition; and 9th. Miscellaneous.

The most important of the amendments in the present course of proceeding, is that of the *examination of the parties before trial*. Under the Evidence Act, 14 & 15 Vict. c. 99, the parties are enabled to give evidence at the trial for themselves, or may be called by the opposite party, but this takes place after all the expenses have been incurred of preparing for trial. The plaintiff will now be enabled, on delivering his declaration, to annex written interrogatories, which the defendant will be obliged to answer, and the defendant, on pleading, may in like manner deliver interrogatories for the examination of the plaintiff. Thus, in the earliest stage of an action, the facts, so far as they can be extracted from either party, will be ascertained, and in numerous instances there will be an end of the litigation.

The next important improvement consists in empowering a Court or a Judge to direct an *arbitration before trial*. It is well known

that where either party resisted a reference, all the expense and delay were incurred in preparing for the trial, and then the Judge, in cases of complicated accounts, compelled a reference. It is intended that the arbitrator should be authorised on any question of law to state a case for the opinion of the Court, and the Court is also to be empowered to refer back the matter in question to the arbitrator.

Under the department of *Evidence*, several important improvements will be effected. The party will be at liberty to discredit his own witness, and to give evidence of contradictory statements made by an adverse witness. Disputed handwriting may be proved by comparison with undisputed documents, and provision made for stamping documents at the trial by payment into Court of the duty and a penalty. The rule as to calling the attesting witness to an instrument is also to be altered, except in certain cases, and ample provision is made for the discovery of documents, and for inspection of the property in question by the parties and their witnesses.

Another very important amendment, which will apply to the proceedings in an action either before or after trial, is that of obtaining evidence in support of a *motion* or *summons*. Where persons refuse to make affidavits, the Court or Judge will be authorised to compel their attendance to be orally examined. This power will extend, not only to questions before the Court or a Judge at Chambers, but to references to the Master. Numerous instances have occurred, on inquiries before that officer, where justice has been defeated in consequence of the refusal of persons to make affidavits; and it is evident, indeed, that where the object of the reference is to investigate conflicting statements, the examination should be *voir dire*, and the Court or Judge, or Master,

should be enabled, by the personal examination of the parties and witnesses, to judge of the truth of their statements.

The improvements at the *trial* itself consist of an extension of the qualification of persons to serve on juries, by which the expense of special juries will, for the most part be avoided, although the right to try by a special jury is preserved. The important power of adjourning a trial on certain terms and conditions, is also to be conferred on the Judge, and a second speech of counsel at the close of the evidence for each of the parties, is to be allowed,—the right of reply remaining as at present. The jury are to be discharged at the expiration of 12 hours, unless they unanimously desire further time.

The powers of *appeal* are much extended, for if a rule *nisi* for a new trial be refused, the party may appeal to the Court of Error, and the notice of appeal is to be a stay of execution, provided bail be given, and error may be brought on a judgment given on a special case.

Proceeding next to *executions* after verdict or judgment, it is provided that a judgment debtor may be examined as to the debts due to him, and a Judge may order an attachment on such debts, and proceedings may be taken to sue the garnishee, or levy the amount due to the judgment debtor.

Various improvements are also effected in the proceedings by way of *mandamus* and *prohibition* for simplifying the practice and diminishing the expense.

According to the arrangement thus indicated, we proceed to give the clauses of this important Bill, which, we trust, will effectually remove many at least of the objections to the Superior Courts.

I. PROCEEDINGS BEFORE TRIAL.

The following clauses authorise the *examination of the parties* before trial on interrogatories, founded on an affidavit of the plaintiff or defendant, as the case may be, and his attorney; and if the answers to the interrogatories are insufficient, the Court, or a Judge, may direct an oral examination.

In all causes in any of the Superior Courts, by order of a Court or a Judge, the plaintiff may, with the declaration, and the defendant may, with the plea, or either of them may, at any other time, deliver to the opposite party or his attorney (provided such party would be liable to be called and examined as a witness upon such matter) interrogatories in writing upon any matter as to which discovery may be sought, and require such party within 10 days

to answer the questions in writing by affidavit, to be sworn and filed in the ordinary way; and any party omitting, without just cause, sufficiently to answer all questions, as to which a discovery may be sought, within the above time, or such extended time as the Court or a Judge shall allow, shall be deemed to have committed a contempt of the Court, and shall be liable to be proceeded against accordingly; s. 51.

The application for such order shall be made upon an affidavit of the party proposing to interrogate, and his attorney or agent, stating that the deponents believe that the party proposing to interrogate, whether plaintiff or defendant, will derive material benefit in the cause from the discovery which he seeks, that there is a good cause of action or defence upon the merits, and, if the application be made on the part of the defendant, that the discovery is not sought for the purpose of delay; provided that where it shall happen, from unavoidable circumstances, that the plaintiff or defendant cannot join in such affidavit, the Court or Judge may, if they or he think fit, upon affidavit of such circumstances by which the party is prevented from so joining therein, allow and order that the interrogatories may be delivered without such affidavit; s. 52.

In case of omission, without just cause, to answer sufficiently such written interrogatories, it shall be lawful for a Court or a Judge, at their or his discretion, to direct an *oral examination* of the interrogated party, as to such points as they or he may direct, before a Judge or Master, or before the Judge of any County Court, and the Court or Judge may by such rule or order, or any subsequent rule or order, command the attendance of such party or parties before the person appointed to take such examination, for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination, and the costs of the application, and of the proceedings thereon, and otherwise, as to such Court or Judge shall seem just; s. 53.

Such rule or order shall have the same force and effect, and may be proceeded upon in like manner, as an order made under the Act passed in the 1st year of the reign of his late Majesty King William the 4th (c. 22); s. 54.

Whenever, by virtue of this Act, an examination of any witness or witnesses has been taken before a Judge of one of the said Superior Courts, or of a County Court, or before a Master, the depositions taken down by such examiner shall be returned to and kept in the Master's Office of the Court in which the proceedings are pending; and office copies of such depositions may be given out, and the depositions may be otherwise used, in the same manner as in the case of depositions taken under the herein-before mentioned Act passed in the 1st year of the reign of his late Majesty King William the 4th (c. 22); s. 55.

It shall be lawful for every Judge, Master, or other person named in any such rule or order as aforesaid for taking examinations under this Act, and he is hereby required to make, if need be, a special report to the Court, in which such proceedings are pending, touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the Court is hereby authorised to institute such proceeding and make such order and orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the Court; s. 56.

The costs of every application for any rule or order to be made for the examination of witnesses by virtue of this Act, and of the rule or order and proceedings thereon, shall be in the discretion of the Court or Judge by whom such rule or order is made; s. 57.

The clauses empowering a reference before trial to *arbitration* are as follow:—

If it be made appear, at any time before trial, to the satisfaction of the Court or a Judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge, upon such application, if they or he think fit, to order that such matters of account, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to the judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge shall think reasonable; and the award or certificate of such referee shall have the same effect as the finding of a jury upon the matters referred; s. 3.

If it shall appear to the Court or a Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a Judge upon the consent of both parties as hereinbefore provided, it shall be lawful for such Court or Judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the jury or Judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive; s. 4.

It shall be lawful for the referee, upon any reference under this Act, if he shall think fit, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and to award that judgment be entered according to the opinion of the Court; s. 5.

If, upon the trial of any issue of fact by a Judge under this Act, it shall appear to the Judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful

for him, at his discretion, to order that such matters of account be referred to an arbitrator appointed by the parties, or to an officer of the Court, or, in country causes, to a Judge of any County Court, upon such terms as to costs, and otherwise, as such Judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the Judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made; s. 6.

The proceedings upon any arbitration under this Act shall, except otherwise directed hereby or by the order of reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of Court or Judge's order; s. 7.

In any case where reference shall be made to arbitration under this Act, the Court or a Judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the re-consideration and re-determination of the said arbitrator, upon such terms, as to costs and otherwise, as to the said Court or Judge may seem proper; s. 8.

All applications to set aside any award made under this Act shall and may be made within the seven days of term next following the publication of the award, whether made in Vacation or Term; s. 9.

Any award made under this Act may, unless otherwise ordered by the Court or a Judge, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed; s. 10.

II. EVIDENCE.

The proposed alterations in the rules of evidence are the following:—

If any person called as a witness shall refuse from alleged conscientious motives to be sworn, it shall be lawful for the Court or Judge or other presiding officer, upon being satisfied of the sincerity of such objection, to permit such witness, instead of being sworn, to make his or her solemn affirmation or declaration in the words following; *videlicet*,

"I A. B., do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare that the taking of any oath is contrary to my religious belief and I do also in the same solemn manner affirm and declare," &c.

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form; s. 18.

If any person making such solemn affirmation or declaration shall wilfully, falsely, and corruptly affirm or declare any matter or thing,

which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the Laws and Statutes of this kingdom are or may be enacted or provided against persons convicted of wilful or corrupt perjury; s. 19.

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall prove adverse, contradict him by other evidence, or, by leave of the Judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement; s. 20.

If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement; s. 21.

A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: Provided always, that it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit; s. 22.

A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanour, and, upon being so questioned, if he either denies the fact, or refuses to answer, it shall be lawful for the opposite party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the Court, or other officer having the custody of the records of the Court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of 5s., and no more, shall be demanded or taken), shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same; s. 23.

It shall not be necessary to prove by the attesting witness any instrument to the validity

of which attestation is not requisite; and such instrument may be proved by admission, or otherwise, as if there had been no attesting witness thereto; s. 24.

Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine (and, if sought to be used by the party in whose handwriting it is, further proved to have been written prior to any question respecting the genuineness of the disputed writing) shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses thereupon, may be submitted to the Court and jury as evidence of the genuineness, or otherwise, of the writing in dispute; s. 25.

Upon the production of any document as evidence at the trial of any cause, it shall be the duty of the officer of the Court, whose duty it is to read such document, to call the attention of the Judge to any omission or insufficiency of the stamp; and the document, if unstamped, or not sufficiently stamped, shall not be received in evidence until the whole or (as the case may be) the deficiency of the stamp duty, and the penalty required by statute, together with the additional penalty of 1*l.*, shall have been paid; s. 26.

Such officer of the Court shall, upon payment to him of the whole or (as the case may be) of the deficiency of the stamp duty payable upon or in respect of such document, and of the penalty required by Statute, and of the additional penalty of 1*l.*, give a receipt for the amount of the duty or deficiency which the Judge shall determine to be payable, and also of the penalty, and thereupon such document shall be admissible in evidence, saving all just exceptions on other grounds; and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer; and such officer shall, at the end of each sittings or assizes (as the case may be) duly make a return to the Commissioners of the Inland Revenue of the moneys, if any, which he has so received by way of duty or penalty, distinguishing between such moneys, and stating the name of the cause and of the parties from whom he received such moneys; and he shall pay over the said moneys to the Receiver-General of the Inland Revenue, or to such person as the said Commissioners shall appoint or authorise to receive the same; and in case such officer shall neglect or refuse to furnish such account, or to pay over any of the moneys so received by him as aforesaid, he shall be liable to be proceeded against in the manner directed by the 8th section of an Act passed in the Session of Parliament holden in the 13 & 14 Vict., intituled "An Act to repeal certain Stamp Duties, and to grant others in lieu thereof, and to amend the Laws relating to the Stamp Duties;" and the said Commissioners shall, upon request, and production of the receipt hereinbefore mentioned, cause such documents to be stamped with the proper stamp or stamps in respect of the sums so paid as aforesaid; s. 27.

No document made or required under the provisions of this Act shall be liable to any stamp duty; s. 28.

No new trial shall be granted by reason of the ruling of any Judge that the stamp upon any document is sufficient; s. 29.

Upon the application of either party to any cause or other civil proceeding in any of the Superior Courts, upon an affidavit by such party of his belief that any document, to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the Court or Judge to order that the party against whom such application is made shall answer on affidavit, stating what documents he has in his possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he objects (and if so, on what grounds), to the production of such as are in his possession or power; and upon such affidavit being made the Court or Judge may make such further order thereon as shall be just; s. 50.

Either party shall be at liberty to apply to the Court or a Judge for a rule or order for the inspection by the jury, or by himself, or by his witnesses, of any real or personal property the inspection of which may be material to the proper determination of the question in dispute: and it shall be lawful for the Court, or a Judge, if they or he think fit, to make such rule or order, upon such terms as to costs and otherwise as such Court or Judge may direct: Provided always, that nothing herein contained shall affect the provisions of the "Common Law Procedure Act, 1852," or any previous Act as to obtaining a view by a jury: Provided also, that all rules and regulations, now in force and applicable to the proceedings by view under the said last-mentioned Act shall be held to apply to proceedings for inspection by a jury under the provisions of this Act, or as near thereto as may be; s. 58.

III. APPLICATIONS TO THE COURT OR A JUDGE.

Upon motions founded upon affidavits it shall be lawful for either party to make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as shall hereafter be made respecting such affidavits; s. 45.

Upon the hearing of any motion or summons it shall be lawful for the Court or Judge, at their or his discretion, and upon such terms as they or he shall think reasonable, from time to time to order such documents, as they or he may think fit, to be produced, and such witnesses as they or he may think necessary, to appear, and be examined *visd voce*, either before such Court or Judge, or before any Judge or Master, or Judge of any County Court, whom they or he may direct

to report thereupon, and upon hearing such evidence, or reading the report of such Judge or Master, to make such rule or order as may be just; s. 46.

The Court or Judge may by such rule or order, or any subsequent rule or order, command the attendance of the witnesses named therein, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order; and such rule or order shall be proceeded upon in the same manner, and shall have the same force and effect, as a rule of the Court under an Act passed in the 1st year of the reign of his late Majesty King William the 4th, c. 22, intituled "An Act to enable Courts of Law to order the Examination of Witnesses upon Interrogatories or otherwise;" and it shall be lawful for the Court, or Judge, or Master, to adjourn the examination from time to time as occasion may require; and the proceedings upon such examination shall be conducted, and the depositions taken down, as nearly as may be, in the mode now in use with respect to the *visd voce* examination of witnesses under the last-mentioned Act; s. 47.

Any party to any civil action or other civil proceeding in any of the Superior Courts, requiring the affidavit of a person who refuses to make an affidavit, may apply by summons for an order to such person to appear and be examined upon oath before a Judge, or Master, or before the Judge of any County Court, to whom it may be most convenient to refer such examination, as to the matters concerning which he has refused to make an affidavit; and a Judge may, if he think fit, make such order for the attendance of such person before the person therein appointed to take such examination, for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, and may therein impose such terms as to such examination and the costs of the application and proceedings thereon, as he shall think just; s. 48.

Such order shall be proceeded upon in like manner as an order made under the hereinbefore mentioned Act passed in the 1st year of the reign of his late Majesty King William the 4th, c. 22, and the examination thereon shall be conducted, and the depositions taken down and returned, as nearly as may be, in the mode now used on *visd voce* examinations under the said Act of Parliament; s. 49.

We shall continue our review of the Bill in our next Number, particularly on *trials with and without juries*, on *new trials and appeals*, and on *executions and foreign attachments*. The proposed alterations relating to proceedings on writs of *Mandamus* and *Prohibition*, will also be noticed.

THE LATE MR. JUSTICE TALFOURD.

It is with feelings of the deepest regret, both professional and personal, that we record the death of Sir Thomas Noon Talfourd, on Monday last, the 13th March. This much lamented and sudden event took place at Stafford, whilst the learned Judge was delivering his charge to the Grand Jury, and commenting with his usual eloquence on the causes which had produced the fearful and numerous cases of crime which then stood for trial,—there being no less than 30 manslaughters, and in the whole 100 prisoners. It seems not improbable that the deep feeling which was excited in the mind of the Judge by this enormous amount of criminality, in some degree contributed to the fatal result. In the midst of his address he was seized with apoplexy, and although attended by several medical men, expired almost immediately.

It is consolatory to those who had the gratification of knowing Mr. Justice Talfourd in private as well as public life, that the public journals have uniformly expressed the highest respect and regard for his eminent worth, genius, and learning, both as a lawyer and an author. In the Profession there is but one sentiment of deep regret for this unexpected calamity. It is, indeed, lamentable beyond all measure, that a man so highly gifted in all excellent qualities of head and heart, so beloved by all who knew him, should be thus cut off without warning, at a time when, in the ordinary course of nature it might have been anticipated that he would fulfil the duties of his judicial station for many years, and then retire for some period of leisure and tranquillity before he departed hence and should be seen no more.

It is our melancholy duty to notice some of the principal events of his life and his legal and literary labours.

He was born at Reading, on the 26th January, 1795, and became a pupil of Mr. Chitty, the eminent Special Pleader, in 1813. Besides his ordinary studies and labours as a diligent pupil, he zealously and ably assisted in the composition of several of Mr. Chitty's voluminous works. He was a member of the Middle Temple, practised as a Special Pleader for a few years, and was called to the Bar on the 9th February, 1821. He joined the Oxford Circuit and Berkshire Sessions, and at this time, we are informed, he was a Law Reporter for the *Times*.

In 1833, he was appointed Recorder of

Banbury, and called to the degree of Serjeant-at-Law. By the Royal Warrant of William 4th, of 24th April, 1834, he was included in the Patent of Precedence next after Mr. Justice Coleridge. He was promoted, in 1846, to the dignity of Queen's Serjeant, taking precedence of all Queen's Counsel. Lord Lyndhurst gracefully conferred this honour on a political opponent, whom he esteemed as a man of genius. On the promotion of Sir Thomas Wilde, in July, 1846, to the Chiefship of the Common Pleas, Mr. Serjeant Talfourd became the Queen's Ancient Serjeant,—the permanent head of the Bar.

His career in Parliament commenced in January, 1835, when he was returned at the general election for his native borough; he was re-elected in July, 1837, and continued until the general election in 1841. He was again elected in August, 1847, and held his seat till his elevation to the Bench.

As a legislator, he was distinguished by the introduction of the Bill for amending the Law of Copyright, which he advocated for several Sessions with an eloquence rarely equalled and never surpassed, and the measure was ultimately carried under his guidance, though at the time it passed he was not in the House. He also commenced, and successfully carried through, the Bill for the custody of infants,—one of the several measures of justice and humanity for which he always contended.

In the month of July, 1849, during the Summer Circuit, on the death of Mr. Justice Coltman, the learned Serjeant was raised to the Common Pleas Bench. To all these honours must be added that of the degree of Doctor of Civil Law, which was conferred on him by the University of Oxford. Such has been his eminent course as a lawyer and senator. We turn now to review the distinction he attained as an Author.

Whilst a law student, he wrote *Strictures on Capital Punishments*, the true nature of Justice, and the legitimate design of Penal Institutions; with *Observations on the Punishment of the Pillory*; and an *Appeal against the Act for regulating Royal Marriages*. He also wrote an *Address to the Protestant Dissenters of Great Britain in regard to the Roman Catholics*. Besides his contributions to the many elaborate works of Mr. Chitty, we may notice his several editions of the *Quarter Sessions Practice*, the last of which was published in 1841.

Viewing him next as a literary author, his

benevolent and enlightened disposition shone forth at an early period of his life. Whilst at school he wrote a poem on the education of the poor. His fertile imagination was also evinced at the same period in "An Indian Tale;" to which may be added a didactic poem on the union and brotherhood of mankind. He was also the author of "An estimate of the Poetry of the Age," in which he zealously defended Mr. Wordsworth from the hostile attacks which were made upon him by almost all the critics of the time. He also contributed many articles to the Encyclopædia Metropolitana, the Edinburgh Review, and several Magazines.

His celebrated tragedy of "Ion" was written in 1834, and on the 26th May, 1836, it was represented at Covent Garden Theatre, then under the management of Mr. Macready. His "Athenian Captive" was subsequently produced, and afterwards "Glencoe." He also edited "The Remains of Charles Lamb," and other works. These were followed by his "Vacation Rambles."

He married soon after he was called to the Bar, and has left a widow and three sons and two daughters, to lament his grievous loss. One of his sons was called to the Bar in Michaelmas Term, 1852. It remains only to add, that throughout his life he was distinguished alike for his kindness and generosity and his prompt and brilliant intellect. During his career at the Bar, for nearly thirty years, he acquired the regard and esteem even of the competitors whom he surpassed. His elevation to the judgment-seat made no difference in the warmth of his friendship or the affable courtesy of his manner to all, however humble, who approached him. He held his high office meekly and nobly, and though he has not lived long to enjoy its dignity, he died honoured and respected throughout the land which gave him birth, and his renown will extend wheresoever the English language is understood. In the words of Mr. Justice Coleridge, addressed to the Grand Jury at Derby, "he had one ruling purpose of his life—the doing good to his fellow-creatures. He was eminently courteous and kind, generous, simple-hearted, of great modesty, of the strictest honour, and of spotless integrity." This is the highest praise from a man of kindred excellence, pre-eminently competent to pronounce a just, sincere, and discriminating opinion.

TESTAMENTARY JURISDICTION. BILL.

We conclude the summary of this Bill from our last Number, p. 354.

Procedure of the Court.

48. Probates of wills, grants of administration, and certificates of intestacy shall be obtained through the Testamentary Office, in such or the like manner, as near as may be, as probates and grants of administration have been heretofore obtained in the Prerogative Court, except so far as is otherwise provided by this Act, or may be otherwise provided by any general orders to be made in pursuance of this Act.

49. The person or some or one of the persons applying for any probate of a will affecting personal estate or any grant of administration shall, before such probate or administration shall be granted, make an affidavit, with a Schedule annexed thereto, in a form similar to the form set forth in the Schedule (B.) to this Act, with such variations as the nature and circumstances of the case may require.

50. When probate of any testator's will, whether consisting of one instrument only or of two or more instruments or sets of instruments, and as to such instrument or all or any of such instruments or sets of instruments operating on real estate as well as on personal estate, shall have been granted to the executor or any one or more of the executors thereby appointed, such probate shall enure for the benefit of the person or persons to or for whose benefit the real estate devised by such testator shall have been devised, and such probate shall be conclusive evidence in all Courts and before all tribunals of the will of the deceased, subject, however, to be questioned in a suit to be instituted in the Court for the purpose of recalling or revoking such probate, or for establishing the same.

51. Citation to executors, &c. to prove will.

52. Such grant not to prejudice any subsequent grant.

53. Devisees of real estate devised by a will may obtain probate of such will.

54. Administrator of personal estate to administer real estate also.

55. Where a person dies, leaving an instrument affecting real estate, and another personal estate, separate probates to be granted, but in no other case.

56. Grant of probate of administration unrestricted as to real or personal estate, to be conclusive evidence that testator left no other will.

57. Grant of probate or administration restricted to real or personal estates to be conclusive evidence in like manner.

58. Expense of probate to be borne by person applying for same.

59. Suit to establish will, &c., may be instituted by bill or claim.

60. No demurrer for want of parties, but suit to proceed if Judge think fit.

61. Certificate of intestacy to be issued to heir or persons interested, and shall enure for benefit of heir, &c.

62. Such certificate to be granted upon affidavit of person applying.

63. Practice as to caveats in the Court to correspond with practice as to caveats in the Prerogative Court.

64. The issuing of any such caveat as last aforesaid, and all proceedings thereunder, shall be deemed and taken to be of the nature of common form business.¹

65. It shall be lawful for any party to any suit in the Court for establishing any will or intestacy, or for obtaining, recalling, or revoking any probate, administration, or certificate of intestacy, to apply to the Court in a summary way for an order calling upon any person, though not a party to the cause, to produce and bring in to the Testamentary Office of the Court, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary, made or purporting to be made by or for the deceased person whose will shall be in contest in the cause, which may be shown to be in the possession or under the control of such person; and if it shall not be shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for concluding that he has the knowledge of any such paper or writing, it shall be lawful for the Court to direct such person to be examined upon interrogatories respecting the same, and such person shall be bound to answer such interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not answering such interrogatories, or not producing or bringing in such paper or writing, as he would have been subject to in case he had been a party to the cause and had made such default as aforesaid; and the costs of all such proceedings and of such production as aforesaid shall be in the discretion of the Court.

66. Court may direct validity of a will to be tried at law by a jury.

67. Orders, &c., of the Court may be reversed.

68. Power to make rules and regulations.

69. The course of proceeding in the Court in common form business shall, except where otherwise provided by this Act, or by any rules or orders to be from time to time made by the Lord Chancellor in pursuance of this Act, so far as the circumstances of the case will admit, be according to the present form and manner of proceeding in the Prerogative Court; and all Statutes, laws, usages, and practices now in force in the Prerogative Court, save and except so far as such Statutes, laws, usages, and practices, or any of them, may be repealed, altered, or varied by this Act, or by any order or orders to be from time to time made thereunder, or

may be otherwise inconsistent with the provisions of this Act, shall apply to, govern, and be observed by the Court with respect to common form business, in the same manner as such Statutes, laws, usages, and practices apply to, govern, and were observed by the Prerogative Court.

District Offices

70. Probate of administration shall not in any case be granted through any district office, unless it shall appear by the affidavit of the person or some or one of the persons applying for the same, that the testator or intestate, as the case may be, died in England or Wales, and at the time of his death had a fixed place of abode within the district in which the application is made, nor unless the personal estate or effects of the deceased, exclusive of what he shall have been possessed of as a trustee and not beneficially, shall have been sworn to be under the value of 1,000*l*.

71. The affidavit or affidavits so to be made shall be conclusive for the purpose of authorising the grant of probate or administration through the district office; and no grant of probate or administration made through any district office shall be liable to be recalled, revoked, or otherwise impeached by reason only that the testator or intestate died out of England or Wales, or had no fixed place of abode within the district, or that his personal estate and effects amounted to or exceeded the sum of 1,500*l*. in value, and whether the person or persons making such affidavit or affidavits were or were not aware of the truth of the case at the time of making the same.

72. Upon application being made to any district registrar, for any probate or administration, such registrar shall receive such application, and take into his custody the will for the probate of which such application is made, or which is proposed to be annexed to the letters of administration for which application is made, and shall administer such oaths as shall be necessary to be taken before such probate or administration can be granted; and the probate or administration shall be prepared by the solicitor of the person making such application, under the direction of such registrar; and when such probate or administration shall have been perfected, with the exception of affixing the seal thereto, such registrar shall without delay transmit through the General Post Office, in a sealed bag or parcel, such probate or administration, with the affidavits and other papers which may be required for granting such probate or administration, to one of the record keepers, in order that the seal of the Court may be affixed thereto by the proper officer in London; and when such seal shall have been affixed to such probate or administration the same shall be sent by the record keeper, through the General Post Office, in a sealed bag or parcel to the registrar by whom the application for the same shall have been transmitted, in order that the same may be delivered to the executor or administrator entitled thereto.

¹ Can this be correct? Does not a caveat take the case out of the "common form" class?—Ed.

73. The registrar of each district shall retain in the district registry all wills to be taken into his custody as aforesaid, for the space of six calendar months, to be computed from the time at which the application for probate thereof or for administration with the same annexed shall have been made, and shall permit the same to be there inspected by all persons in the same manner as wills in the custody of the Prerogative Court are now permitted to be inspected, or otherwise as the Lord Chancellor shall from time to time direct, and shall, at the expiration of the said period of six calendar months, transmit such will through the General Post Office, in a sealed bag or parcel, to the record keeper of the Court.

74. Together with every probate or administration which shall be sent to the record keeper of the Court to be sealed, there shall be transmitted by the district registrar an official copy of the will of which such probate shall be granted, or which shall be annexed to such administration, which official copy shall be retained and deposited in the Testamentary Office, and shall and may be inspected by all persons at such office until the original will shall be transmitted to the record keeper, who, upon receipt of such original will, shall return the official copy to the registrar of the district from which the same was originally received, there to be retained and deposited in the registry of such district, where the same may be inspected in like manner as the original will or a copy thereof may be inspected in the Testamentary Office in London.

75. Duty of record keeper.

76. Caveats against the grant of probate or administration may be entered in any district office, and the proceedings thereunder shall be similar in all respects to proceedings under caveats entered in the Testamentary Office in London.

77. It shall not be competent for any district registrar to receive any application for a certificate of intestacy.

78. It shall not be obligatory on any person to apply for probate or administration through any district office, but in every case such application may be made at the Testamentary office in London for such probate or administration, wherever the residence of the testator or intestate may have been, and whatever the amount of the property.

Citations or other Processes.

79. Citations or other processes calling upon executors or other persons to accept or refuse probate or administration, or to shew cause why it should not be granted to the person suing out the process, shall be issuable from the Testamentary Office in London, and also (in cases in which, under the provisions of this Act, probate or administration may be obtained through any district office), from such district office, and the same shall be made returnable in the office from which the same shall have been issued.

80. Such citations or other processes, and

all subsequent proceedings thereunder, where the probate of grant or administration follows as of course, and to either party according to the tenor of the citation or other process, shall be deemed and taken to be common form business.

Transmission of Wills and other Documents.

81. Judges of the present Ecclesiastical Courts and others, at request of principal registrar, to transmit all wills, &c., in their possession, &c., to the record keepers, to be deposited in Testamentary Office, there to be arranged for reference.

82. Penalty for default.

83. Power to Lord Chancellor to arrange for temporary custody of wills, &c., until same are deposited in Testamentary Office.

Kalendars.

84. Kalendars made in the Testamentary Office to be printed and furnished to district registrars.

Limitation of time of proceeding.

85. Except as hereinafter provided, no suit or proceeding shall be instituted or taken to establish any will, or to revoke or recal any probate of a will or grant of administration, after the expiration of 20 years from the date of the certificate of intestacy or grant of administration or probate, as the case may be.

86. If at the time of the granting or issuing any certificate of intestacy, or probate, or administration, with respect to the estate of any deceased person, the person or some or one of the persons entitled to establish the will of such deceased person, or to revoke or recal such probate or administration, shall have been or shall be under the disability of infancy, coverture, idiotcy, lunacy, unsoundness of mind, or absence beyond seas, then and in such case such person, so under disability, or any person claiming under him, may institute or take any suit or proceeding for the purpose of establishing any will of such deceased person, or of revoking or recalling any probate or administration of his estate, within 10 years after the removal of such disability, or after the death of the person under disability, which shall have first happened.

87. Any devise of real estate or any heir, or any person claiming under any such devisee or heir, may institute a suit or proceeding for the purpose of establishing a will or revoking or recalling probate, so far as respects his own interest only, at any time within the period within which, if this Act had not passed, he might have sued at law or in equity for the recovery of the estate or property devised by such will or claimed as upon an intestacy, or the rents or profits thereof.

88. In cases of fraud it shall be lawful for the Court to authorize the person aggrieved or supposed to be aggrieved thereby to proceed, notwithstanding the expiration of the limited period hereinbefore fixed for the purpose.

Real Estate.

89. None of the provisions hereinbefore contained with reference to the real estate of deceased persons shall extend to the real estate of persons dying before the time appointed for the commencement of this Act.

Fees and Expenses.

90. Lord Chancellor to prepare table of fees to be taken by officers of Court, with power to vary same as he may think fit, and to publish same in Gazette. No other fees to be taken.

91. No officer to retain for his own use any fees, or accept gratuity. Penalty.

92. Prosecution of offenders.

93. Fees not to be paid in money, but by stamps.

94. So much of the Suitors in Chancery Relief Act as applies to the collection of fees by stamps incorporated; except that separate accounts to be kept. Commissioners of Inland Revenue to retain expenses, &c., and pay residue into Bank of England to an account, "The Testamentary Fee Fund Account." Acts relating to stamps under Commissioners of Inland Revenue incorporated.

95. Provisions as to stamps.

96. Power to Lord Chancellor to provide offices, &c., and for the making, writing, printing, counting, and examining official documents and records of the Court and offices, and other copies of such documents and records, and for necessary articles for the offices, and for all other necessary expenses relating thereto.

Void and voidable Probates or Administrations.

97. All probates and administrations granted before the time appointed for the commencement of this Act, which may be void or voidable by reason only that the Courts from which respectively the same were obtained had not jurisdiction to grant such probates of wills or administration, shall be and be deemed for all purposes whatsoever to be and to have been as valid as if the same had been obtained from the Courts entitled to grant such probates and administrations respectively: Provided always, that any void or voidable probate or administration shall not be made valid by this Act, when another probate of the same will or other letters of administration of the same personal estate shall subsequently, but before the time appointed for the commencement of this Act, have been granted out of the proper Court; nor when such probate or administration shall have been revoked, or determined by any Court of competent jurisdiction to have been void, before that time; nor so far as the same respects any personal estate which at the time of the passing of this Act shall be in the possession of any person who would not have been entitled thereto if the same probate or administration were valid; nor shall this Act prejudice or affect any proceedings pending at the time of the passing of this Act in which the validity of any such probate or administration shall be in question between the person claim-

ing under the same and the person claiming adversely thereto, and such probate or administration, if the result of such proceeding shall be to invalidate the same, shall not be rendered valid by this Act; and if such proceedings shall abate or become defective by reason of the death of any party, any person who but for this Act would have any right by reason of the invalidity of any such probate or administration shall retain such right, so that he may commence proceedings for enforcing the same within six calendar months after the death of such party.

Administration Bonds.

98. Sureties in administration bonds.

Real Representative.

99. Power to Court to appoint real representative.

100. Power to real representative to sell and convey; and to mortgage.

Pending Suits.

101. All suits, whether original or by way of appeal, which shall be depending in any Court in England or Wales respecting the grant of probate of any will or administration of the effects of any deceased person shall be transferred, with all the proceedings therein to the Court of Chancery, there to be dealt with and decided according to the rules and practice of that Court, except so far as the Court may think it expedient to adopt for the purposes of such transferred suits or any of them the rules or practices of the Court in which the same shall have been pending, to which end the Court of Chancery shall, for the purposes of such suits, be deemed and taken to have all the powers and jurisdiction to all intents and purposes possessed by the Court from which such suit shall be transferred: Provided always, that this enactment shall not apply to proceedings by way of appeal pending before her Majesty in Council, which proceedings shall be carried on and prosecuted in the same manner in all respects as if this Act had not been passed: Provided also, that every person who, if this Act had not been passed, might have appealed to her Majesty in Council against any proceeding, decree, or sentence of any Court respecting the grant of any probate or administration, may, notwithstanding the provisions of this Act, appeal to her Majesty in Council against such proceedings, decree, or sentence.

Salaries and Retiring Allowances, &c.

102. Salaries of officers.

103. Power to Lord Chancellor to remove any officer becoming infirm or incapable, and to limit retiring allowance.

104. Mode of compensating retiring officers, &c. *Proviso.*

105. Power to persons holding any office, whose incomes are affected by Act to make claim on Treasury for compensation. *Proviso.* Compensation to Judge of Prerogative Court. *Proviso.*

106. Time of payment of salaries, &c.

107. Compensation to Rev. R. Mads.

108. Power to Lord Chancellor to order surplus of Testamentary Fee Fund to be paid into the Exchequer. If fund insufficient to defray salaries, &c., Commissioners of the Treasury to provide for the same.

109. This Act shall not extend to Scotland or Ireland.

SCHEDULE A.

Districts and Places of District Offices throughout England and Wales.

Counties of Northumberland and Durham, (a) at *Durham*.

Counties of Cumberland and Westmoreland at *Carlisle*.

County of York, (b) at *York*.

County of Lancaster except the Hundred of Salford and West Derby and the City of Manchester, at *Preston*.

City of Manchester and Hundred of Salford, at *Manchester*.

Hundred of West Derby in Lancashire, Chester, (c) Flint, Denbigh, Carnarvon, Anglesea, at *Chester*.

Counties of Derby, Nottingham, (d) Leicesters, at *Nottingham*.

County of Lincoln, (e) at *Lincoln*.

Counties of Salop, Merioneth, Montgomery, at *Shrewsbury*.

Counties of Rutland and Northern Division of Northampton and Counties of Huntingdon and Cambridge, (f) at *Peterborough*.

County of Norfolk, (g) at *Norwich*.

County of Suffolk and Northern Division of the County of Essex, at *Ipswich*.

County of Bedford and Southern Division of Northampton, (h) at *Northampton*.

Counties of Warwick (i) and Stafford, (k) at *Lichfield*.

Counties of Radnor, Brecknock, Hereford, Monmouth, at *Hereford*.

Counties of Cardigan, Carmarthen, (l) Pembroke, (m) Glamorgan, at *Carmarthen*.

Counties of Worcester, (n) and Gloucester, (o) except Bristol, at *Gloucester*.

Cities of Bristol and Bath, at *Bristol*.

Counties of Oxford, (p) Berks, Bucks, at *Oxford*.

(a) Including the Towns of Newcastle-upon-Tyne and Berwick-upon-Tweed.

(b) Including the City of York and Ainsty and the Town of Kingston-upon-Hull.

(c) Including the City of Chester.

(d) Including the Town of Nottingham.

(e) Including the City of Lincoln.

(f) Including the University of Cambridge.

(g) Including the City of Norwich.

(h) Including the Town of Northampton.

(i) Including the City of Coventry.

(k) Including the City of Lichfield.

(l) Including the Town of Carmarthen.

(m) Including the Town of Haverfordwest.

(n) Including the City of Worcester.

(o) Including the City of Gloucester.

(p) Including the University of Oxford.

County of Somerset, except the city of Bath, at *Bridgewater*.

County of Devon, (q) at *Exeter*.

County of Cornwall, at *Bodmin*.

County of Wilts, at *Salisbury*.

County of Dorset (r) at *Blandford*.

County of Hants, (s) at *Winchester*.

County of Sussex (t) at *Lewes*.

East Division of the County of Kent, (u) at *Canterbury*.

London, Middlesex, Southern Division of the County of, Essex, Hertfordshire, Surrey, West Kent, in *London*.

SCHEDULE B.

Contains the form of Affidavit and Schedule.

SCHEDULE C.

Is intended to contain the annual salary of each officer, but the salaries are at present left blank.

POINTS IN COMMON LAW PRACTICE.

FINES AND RECOVERIES' ACT. — DESCRIPTION OF MARRIED WOMAN IN AFFIDAVIT IN SUPPORT OF MOTION UNDER S. 91.

THE affidavit in support of a motion for an order under the 3 & 4 Wm. 4, c. 74, s. 91, to enable Mrs. Lydia Sparrow to convey certain property to which she was entitled in her own right, without her husband's concurrence, stated the circumstances under which her husband had deserted her shortly after their marriage in 1801, and that she was ignorant whether he was living or dead. The Court declined to grant an order as the affidavit contained no description of the applicant, but it was afterwards made on an amended affidavit describing her as "the wife of Richard Sparrow, formerly of the parish of," &c. *Esparte Sparrow*, 12 C. B. 334.

WARRANT OF ATTORNEY TO TRUSTEES OF BANKING COMPANY. — AFFIDAVIT ENTITLING, ON ENTERING UP JUDGMENT. — IN NAME OF PUBLIC OFFICER NOT TRUSTEE.

A warrant of attorney was given in 1837, to three trustees of the National Provincial Bank of England, to secure a debt due from the

(q) Including the City of Exeter.

(r) Including the Town of Poole.

(s) Including the Town of Southampton.

(t) Including such of the Cinque Ports and their dependencies as are locally situate in the County of Sussex.

(u) Including the City of Canterbury, and such of the Cinque Ports and their dependencies as are locally situate in the County of Kent.

defendant on his banking account. On a motion in 1852, by the public officer for the time being, to enter up judgment thereon, the affidavit on which the rule was obtained, was entitled in the cause and not "in the matter of," &c. An objection thereto as irregular was overruled, *Jervis, C. J.*, observing—"Sowerby v. Woodroff, 1 B. & Ald. 567, settles the point: there the affidavit upon a motion like this, was held to be properly entitled in the cause,—'for,' said the Court, 'the warrant of attorney must be taken as an admission of a suit pending in the Court, on which judgment is to be entered up.' In *Davis v. Stanbury*, 3 Dowl. P. C. 440, the Master seems to have certified the practice both ways. In *Tidd's Practice*, 9th edit. 553, it is said that the affidavit may be intitled in the cause in which judgment is entered up: and in *Archbold*, 8th edit. 870, it is laid down that it may be intitled either way."

An objection was also taken that the judgment should be entered in the name of the trustees and not of the public officer, but *Jervis, C. J.*, said—"We are clearly bound by the authority of the two cases of *Wills v. Sutherland*, 4 Exch. R. 211, and *Chapman v. Milbain*, 5 Exch. R. 61, which are expressly in point, unless a distinction can be made between a covenant and a warrant of attorney." *Bell v. Fisk*, 12 C. B. 493.

AFFIDAVIT. — DESCRIPTION OF DEPONENT IN.—IRREGULARITY.

The affidavit, under the rule of Easter Term, 4 Wm. 4, verifying the notes of the assessor of the Liverpool Passage Court, on the trial of an action pursuant to the 3 & 4 Wm. 4, c. 42, s. 17, was sworn by *T. H. S.*, "clerk to Edward James, Esq., Barrister-at-Law and Assessor of the Court of Passage of the borough of Liverpool:" Held, defective, inasmuch as it omitted to state the deponent's place of residence,—*Jervis, C. J.*, referred to *Daniels v. May*, 5 Dowl. P. C. 83; and *Elton v. Martindale*, 5 D. & L. 248. *Winch v. Williams*, 12 C. B. 416.

NOTICES OF NEW BOOKS.

Observations on the Government Bill for Abolishing the Removal of the Poor, and Redistributing the Burden of Poor-Rate, with a proposal for more equitably redistributing that Burden. By ROBERT

PASHLEY, Esq., Q. C. Longman & Co. 1854. Pp. 28.

CONSIDERABLE interest has been excited by the Government proposal to abolish the Law of Settlement, and Mr. Pashley, who is eminently qualified to advise on the subject, very opportunely sets out his views in this pamphlet.

We lay before our readers the learned Author's proposal—

That "on the repeal of the Law of Settlement, the yearly sum needed for the relief of the poor be raised by parochial rates on *all* real property; that the amount in the pound levied in each parish should be at such a sum as to equal one-third of the parish-rate needed to raise the relief bestowed in the parish, added to two-thirds of the average poor-rate of England and Wales. According to this plan, two-thirds of the sum expended yearly in relieving the poor, though raised parochially, would be raised equally throughout the whole country, and the remaining third of the expenditure of the whole country would be raised by each parish contributing one-third of its own actual expenditure."

An Account of the present deplorable State of the Ecclesiastical Courts of Record; with proposals for their complete reformation. By WILLIAM DOWNING BRUCE, Esq., Barrister-at-Law. H. Adams; W. Arthorpe. 1854. Pp. 49.

THE learned writer of the present pamphlet has had, it appears, the opportunity of inspecting and examining the ancient Record Offices connected with the principal dioceses, and founded for the important purpose of preserving records of great public and private value. The results of his inquiries are here stated, and he contends that the manner in which the trust reposed in the officers of the diocesan Courts has been fulfilled is very inefficient, and he suggests a practical remedy for the alleged abuse.

Shall the New Street, which is to form the Grand Communication between the Eastern and Western parts of the Metropolis, be straight or crooked? By ROBERT HESKETH, Architect. Weale; Letts & Co. 1854. Pp. 16.

FROM a cursory glance at this pamphlet, it seems the Author proposes that the New Street should pass through the Fleet Prison, and after crossing Farringdon Street, Fetter Lane, Clifford's and Serjeant's Inns to the south of the Record Office, Chancery Lane, to the south of the Law Institution, and

traversing the property between Carey Street and the Strand, would then, to a certain extent, coincide with the Government line to Long Acre; but we think the Government plan preferable, especially in regard to the proposed new Law Courts.

Term, 16 Vict., do not apply to the costs of a reference, but only to the costs of a cause." *Holland v. Vincent*, 9 Exch. R. 274.

LAW OF COSTS.

IN FORMEDON. — OF ISSUES UNDER 4 & 5 ANNE, C. 16. — OF DEMURRER UNDER 3 & 4 WM. 4, C. 42.

THE 4 & 5 Anne, c. 16, s. 5, does not apply to real actions, and the demandant in *formedon* is not therefore entitled to the costs of issues of fact joined on the pleas therein, and which have been found in his favour.

There was a demurrer to the replication to one of the pleas, on which the demandant obtained judgment. *Jervis*, C. J., said,—"the cases of *Wyndowe v. Bishop of Carlisle*, 3 Bingh. 404; 11 J. B. Moore, 269; and *Edwards v. Bishop of Exeter*, 7 Scott, 679; 6 N. C. 146, seem to be authorities to show that the demandant is entitled to the costs of the demurrer under the Stat. 3 & 4 Wm. 4, c. 42, s. 34. *Cannon*, dem.; *Rimington*, ten., 12 C. B. 514.

By the 62nd Order of Hilary Term, 1853, it is ordered, that "when issues in law and fact are raised, the costs of the several issues both in law and fact will follow the finding or judgment, and if the party entitled to the general costs of the cause obtain a verdict on any material issue, he will also be entitled to the general costs of the trial; but if no material issue in fact be found for the party otherwise entitled to the general costs of the cause, the costs of the trial shall be allowed to the opposite party."

TAXATION OF COSTS OF REFERENCE WHERE LESS THAN 20*l.* AWARDED. — HIGHER SCALE.

On a reference of an action at the trial—the costs of the cause to abide the event, and the costs of the reference and award to be in the discretion of the arbitrator—the plaintiff obtained an award of 17*l.* odd, the costs of the reference and award to be paid by the defendant.

In making absolute a rule for the reviewal of the taxation of the Master, who had taxed on the lower scale, *Parke*, B., said, "the directions to the Masters of the Courts of Hilary

NEW ORDER IN CHANCERY.

LEGACY AND SUCCESSION DUTY.

I, THE Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain, do hereby order and direct in manner following, that is to say: That the General Order made by me bearing date the 31st day of January, 1853, be discharged, and in lieu thereof I do order, That the registrar in drawing up any decree or order whereby the Accountant-General shall be directed to pay or transfer any fund or part of any fund in respect of which any duty shall be payable to the revenue under the Acts relating to Legacy or Succession Duty, shall, unless such decree or order expressly provide for the payment of the duty, direct the Accountant-General to have regard to the circumstance that such duty is payable; and where by any decree or order any carrying over to a separate account of any fund in respect of which any such duty may be chargeable shall be directed, the registrar shall add the words "subject to Legacy Duty," or "subject to Succession Duty," as the case may be, to the title of the account; And in order the better to provide security against the payment or transfer by the Accountant-General of any fund chargeable with any such duty, without the duty being first paid, the Accountant-General, on receiving notice from the proper officer that the duty is payable, is to cause a memorandum to be made in his books in conformity with such notice. And the Accountant-General, before executing any decree or order, directing the payment or transfer of any fund, or part of any fund, in respect of which any such duty shall be payable, shall require the production of the official receipt for the duty, or a certificate from the proper officer of the payment of the duty chargeable in respect of any such fund or any portion thereof respectively, by any such decree or order directed to be paid or transferred.

(Signed)

CRANWORTH, C.

9th March, 1854.

NEW LAW COURTS.

LAW V. LUNGS.

The following letter recently appeared in *The Times* :—

"The house-owners round Lincoln's Inn Fields are making a strong effort to have their garden selected as the site of the new Law Courts. They have ceased to occupy their property, the mansions are split up into chambers, the bachelor residents make but little use of the garden, improvements in the approaches will compensate for the lost space by fuller ventilation, and the presence of the Courts will greatly enhance the value of the houses. What harm in appropriating that useless garden to swell the rentals of the absentee landlords ?

"You, sir, who have so often stood up in behalf of the lungs of London, will have no difficulty in answering this question. You will want no arguments to prove the advantage of preserving the great open space which fortune, rather than foresight, has here provided in the very heart of our metropolis. You know that the approaches may and will be improved without the coming of the Law Courts ; you know also that the site proposed by the Law Institution will sweep away a vast mass of corruption, both physical and moral. You will, we may hope, lend your powerful support to defeat a scheme for covering with brick and mortar one of the few green oases in our ever-growing city.

"But, sir, the uselessness of the garden is made a plea for its destruction. Permit me, them, to suggest, that the power to build now sought by the trustees from Parliament should be amended into an order to open. Once throw open that spacious garden for the healthy recreation of the public, and we shall never hear again of its uselessness, though we may be possibly troubled with loud complaints from the publicans of Holborn and Drury Lane.

"UMBRICIUS."

We recommend the trustees to follow the liberal example of the Benchers of the Temple, and adopt the suggestion of the shady correspondent of *The Times*.—ED.

YORK BOROUGH COURT.

It was ordered on the 9th March, by her Majesty in Council, that within one month after such order shall have been published in the *London Gazette*, the provisions of the Common Law Procedure Act, 1852, and the rules made and to be made in pursuance thereof, should apply to the Court of Record of the City of York.—From the *London Gazette* of March 10.

THE PROCTORS' MEMORIAL

AGAINST THE

TESTAMENTARY JURISDICTION BILL.

SIR JOHN DODSON, Judge of the Prerogative Court, attended by a deputation of the practitioners in that Court, had a conference with the Lord Chancellor, pursuant to appointment, at the House of Lords, on the subject of a memorial from the Committee of Practitioners, in reference to the bill for the transfer of the testamentary jurisdiction to the Court of Chancery. Sir John Dodson having introduced the deputation, the memorial was presented to the Lord Chancellor, and was to the following effect :—

"To the Right Hon. Baron Cranworth, Lord High Chancellor of England, &c.

"The humble memorial of the Committee of the Proctors practising in the Prerogative Court of Canterbury.

"Sheweth,—That the announcement of a Bill to be introduced by your Lordship in the House of Peers for the purpose of transferring the testamentary jurisdiction from the existing Courts of Probate to the High Court of Chancery has caused great alarm and anxiety to your memorialists.

"That the report of her Majesty's Commissioners in relation to matters testamentary had led your memorialists to expect that a Court would be established, which should be called 'Her Majesty's Court of Probate,' and 'which should be a superior court of record, and that there would be but one judge of such court, to be appointed by the Crown.'

"That your memorialists have heard with great dismay that it is proposed to vest the whole testamentary jurisdiction in the High Court of Chancery, and to distribute the business among the four Judges of that Court, instead of confining it to a special tribunal.

"That your memorialists most respectfully deprecate the adoption of such a plan in the place of that recommended by the majority of Her Majesty's Commissioners, and beg most earnestly to bring under your Lordship's notice their deliberate conviction that the interests of the public will be best consulted by the adoption of the recommendation of the majority of Her Majesty's Commissioners, whilst the former will entail utter ruin upon your memorialists and the practitioners in the Prerogative Court of Canterbury generally.

"That your memorialists beg to represent to your Lordship that the proposal to continue to the proctors for only 10 years the exclusive practice in common form business, coupled with the limitation of such exclusive right to cases in which the property to be administered is above 1,500*l.*, without any compensation to them for the business which will be thus taken away, will be attended with most prejudicial results to your memorialists and the practitioners in the Prerogative Court of Canterbury, whilst her Majesty's Commissioners

have stated that this business has been carefully and efficiently transacted by the proctors, and that to throw it open 'would be attended with no advantage, but, on the contrary, with considerable detriment to the public.' (Report, p. 22.)

"That your memorialists beg to represent to your Lordship that the existing grants of probate and administration under 1,500*l.* exceed more than two-thirds of the whole common form business of England and Wales, and that the proposal to allow all such grants to be issued from the district registries will cause a very large amount of business to be transacted without any judicial supervision, and that the establishment of 30 district registries will entail an annual expense of between 30,000*l.* and 40,000*l.*, without securing such supervision.

"That your memorialists are most ready to adopt and carry into execution any improvement in the transaction of the testamentary business, and would lend a hearty co-operation in carrying out the scheme recommended by the report of her Majesty's Commissioners.

(Signed)

"W. TOWNSEND. "G. S. NICHOLSON.

"E. W. WADESON. "W. PRITCHARD.

"E. TOLLER. "G. S. HEALES."

"J. I. GLENNIE.

The deputation pressed on his Lordship the disadvantages which they considered likely to result to the public, as well as the great prejudice to the practitioners themselves, from the proposed transfer of jurisdiction, in place of the establishment of a Queen's Court of Probate, as recommended by the majority of the Royal Commissioners, as well as the inadequacy of the reduced portion of practice, reserved for ten years only, as a compensation to the present practitioners in the Prerogative Court for the loss of the whole of their present practice.

His Lordship intimated that he could not abandon the principle of the Bill, but that if the deputation could point out to him any mode by which it could be carried into effect with greater benefit to the body represented by them, he would give it his best consideration.

The deputation undertook to furnish to his Lordship a further communication to effect more completely the object proposed.

SELECTIONS FROM CORRESPONDENCE.

LAW REFORM.—CITY ATTACHMENTS.

As an old city practitioner of many years standing, I am enabled to vouch for the great utility of the practice of the Lord Mayor's Court. Under its proceedings vast sums have been paid by the garnishee to the creditor, and I have known parties come into the city from places on the Continent where the practice was not adopted, to have the benefit and protection of the "foreign attachment."

I cannot think that a greater benefit could

be conferred on the country at large, than to enable the creditor in a similar manner to attach the goods, moneys, or credits of the debtor in the hands of third persons, and the provision might also be extended to stipends due or to become due.

CIVIS.

[We have heard objections which require to be considered on this suggestion.—Ed.]

MANOR OF KENNINGTON.

We hear the most energetic measures are about to be taken to call a public meeting to adopt petitions to both Houses of Parliament, her Majesty, and the Council of his Royal Highness the Prince of Wales, for the enfranchisement of the copyhold estates held of the manor.

The complaints at a preliminary meeting were loud and deep of the enormous fines demanded.

B.

MEDICAL REFORM.

The practice of medicine is universally admitted to require parliamentary reform, and it is hoped that it will not be forgotten to pass stringent enactments to prevent quacks assuming the soubriquet of *Dr.*, and even the actual surnames of her Majesty's medical attendants.

In country places many unqualified parties practise with impunity.

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St. Thomas's Hospital, 9th March, 1854.

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

[For the previous Lists, see pp. 106, 161, 238, 301, 343. These Lists contain many names which have not yet appeared in the *Gazette*.]

Abbott, Fras. Geo., 22, Southampton Bldgs.
Baines, Robert Henry, 3, Verulam Bldgs.
Bird, Wm. Frederick Wratiaslaw, 5, Gray's Inn Square.

Biggood, Thos., 36, Carey Street, Linc. Inn.

Burchell, William, 47, Parliament Street.

Carr, Anthony, 24, Eastcheap.

Chappell, Frederick Patey, 25, Golden Sq.

Child, Robt. Jno., 11, Old Jewry Chambers.

Christopher, John Danby, 26*A*, Argyll St., Regent St.

Clapham, Wm. Hy., 29, Gt. Portland St.

Cole, Robert, 14, Tokenhouse Yard, and

52, Upper Norton Street, Portland Place.

Denton, Samuel, 15, Gray's Inn Square.

Dobinson, James Geo., 57, Linc. Inn Fields.

Doyle, Edward, 2, Verulam Buildings, and

87, Camden Road, Camden Town.

Dyne, Edward, 61, Lincoln's Inn Fields.

Dyte, Henry, 6, King's Bench Walk.

Fiddey, Chas., 3, Paper Buildings, Temple.

Ford, Charles, 5, Bloomsbury Square.

Frankham, Geo. Martin, 31, Moorgate St.

Futvoye, Edward, 23, John St., Bedford Row.

Gribble, Wm., jun., 80, Lombard St., City.

Hanrott, Philip Augustus, jun., 29, Queen Square, Bloomsbury.

Harris, Wm., 5, Stone Bldg., Lincoln's Inn.
 Harrison, John, 14, New Boswell Court.
 Hart, Richard, 16, Austin Friars.
 Heath, Samuel, jun., 1, Church Court, Clement's Lane.
 Hird, Charles William, Portland Chambers, 75, Great Tichfield Street.
 Humphry, George, 21, College Hill.
 Irwin, Anthony Wellington, 5, Gray's Inn Sq.
 Jenkinson, Charles Thos., 29, Lombard St.
 Johnston, James, 57, Chancery Lane.
 Lacy, Thomas, 19, King's Arms Yard.
 Langdale, Wm. Atkinson, 38, Southampton Buildings.
 Michael, Jacob, 9, Red Lion Square, and 7, Old Jewry.
 Miller, James, 48, and 24, Eastcheap.
 Monkhouse, Cyril John, 3, Craven Street, Strand.
 Morris, John Michael, Moorgate Street Chambers, and 6, Wellclose Square.
 Philipe, George Peter De Rhe, 10, Gray's Inn Square.
 Philpot, Jno., 20, Montague St., Russell Sq.
 Powell, Geo., 3, Raymond Bldgs., Gray's Inn.
 Rees, John, 21, College Hill.
 Rutter, John Champey, 4, Ely Pl., Holborn.
 Smedley, Fras., 40, Jermyn St., St. James's.
 Smith, William Wyke, 16, Southampton Street, Bloomsbury.
 Tritton, Frederick, 11, Three Crown Square, and 10, Paragon, New Kent Road.
 Vaizey, John, 2, South Sq., Gray's Inn.
 Western, Charles Francis, 7, Great James Street, Bedford Row.
 Western, Edward, 7, Great James Street, Bedford Row.
 Wilde, Charles Norris, 21, College Hill.
 Wilkinson, Josiah, 2, Nicholas Lane.
 Wire, David Williams, 9, St. Swithin's Lane, and Stone House, Lewisham, Kent.
 Wood, Thomas, Guildhall Justices' Room.
 Woodrooffe, Wm., 1, New Sq., Lincoln's Inn.
 Wren, Wm. Weld, 32, Fenchurch Street.

NOTES OF THE WEEK.

COLONIAL LAW APPOINTMENTS.

THE Queen has been pleased to appoint *John Letang*, Esq., to be her Majesty's Attorney-General for the Island of *Dominica*.

Her Majesty has also been pleased to appoint *John Watts Edden*, Esq., to be her Majesty's Solicitor-General for the Colony of the *Cape of Good Hope*.

Her Majesty has been pleased to appoint *Felix Bedingfield*, Esq., now Master of the Supreme Civil Court for the Island of *Trinidad*, to be her Majesty's Treasurer for the Island of *Mauritius*. — From the *London Gazette* of March 10.

SETTING DOWN APPEALS IN CHANCERY.

The Lord Chancellor stated, that he wished it to be understood that all Appeals were to be set down before the Lords Justices, and their Lordships would say whenever they desired any case to be heard by the full Court.

NEW MEMBER OF PARLIAMENT.

Chichester Samuel Fortescue, Esq., for the County of *Louth*, one of the Lords Commissioners of her Majesty's Treasury.

SCOTCH LAW APPOINTMENT.

The Queen has been pleased to appoint *John Christison*, Esq., Advocate, to be the Sheriff of the Shire or Sheriffdom of *Ayr*, in the room of *Archibald Bell*, Esq., deceased. — From the *London Gazette* of March 14.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

Lord v. Colvin. Feb. 23, 1854.

INSPECTION OF DOCUMENTS BY PLAINTIFF ON PROOF BY DEFENDANT OF EXECUTION. — PRACTICE.

Held, dismissing with costs an appeal from Vice-Chancellor Kindersley, that a defendant was entitled to prove the execution and handwriting of certain documents by the evidence of another defendant, without their production to the plaintiff for view and inspection. And held, that in order to obtain an inspection, the plaintiff must serve the defendant with a subpoena duces tecum under s. 18 of the 15 & 16 Vict. c. 86.

THIS was an appeal from the decision of Vice-Chancellor *Kindersley*. It appeared that, on the examination of witnesses before a commissioner in France, one of the defendants

proved the handwriting and execution of 11 documents by the evidence of another defendant, whereupon the plaintiff claimed a right of view and inspection under the 15 & 16 Vict. c. 86, s. 18. The Vice-Chancellor having refused to order such inspection, this appeal was presented.

Anderson, Rose, and G. W. Collins in support; *Glasse and Welford*, contra, were not called on.

The Lords Justices said, that if the documents were in the possession of the defendant, the plaintiff might, under s. 18, obtain an inspection by serving him with a *subpoena duces tecum*. The new Act had not altered the rule, that the execution of a deed might be proved without its production to the opposite side being compelled, and the appeal must be dismissed, with costs.

Hill v. Great Northern Railway Company.
March 11, 13, 1854.

RAILWAY COMPANY.—PURCHASER UNDER POWER OF SALE IN MORTGAGE AFTER NOTICE TO SUBSEQUENT INCUMBRANCER.

A railway company, after giving notice to the plaintiff, an annuitant on certain property required for their works, with a power of entry and distress, purchased under a power of sale of a prior incumbrancer. The plaintiff, on a bill for an account and payment, had obtained a decree in the nature of a decree for the specific performance of the contract: Held, on appeal from Vice-Chancellor Kindersley, that as the bill was by an equitable incumbrancer to enforce his incumbrance against the defendants' deriving title through a prior incumbrancer, and did not show the dealings between the first incumbrancer and them to have been fraudulent and improper, it must be dismissed, but without costs.

It appeared, that by an indenture dated in January, 1838, an annuity of 7*l.* a year for the lives of three persons, charged (amongst other property) on two leasehold houses in Union Place, Battle Bridge, was granted to the plaintiff, with a power of entry and distress. The premises had, however, together with other property, been previously mortgaged to a Mr. Gadd, with a power of sale, but the mortgage was satisfied by the sale of certain of such other property, although the legal estate was still outstanding. The defendants requiring the premises for the purposes of their works, delivered in 1847 a notice to the plaintiff, whereupon he gave notice of his claim for compensation, &c., in respect of his interest, to the defendants, but they, without proceeding under the 8 Vict. c. 16, obtained a conveyance of the legal estate from Mr. Gadd. The annuity was in arrear, but the plaintiff was unable to distrain under his power on the premises, which had been converted by the defendants, whereupon this bill was filed for an account of what was due, and for payment with costs of the same, together with the value of the annuity. The Vice-Chancellor Kindersley had decreed in favour of the plaintiff—the value to be taken as at the time the plaintiff received the notice (reported *ante*, p. 75), and this appeal was now presented.

Elmsley and Younge for the plaintiff; *Roll and Goren* for the defendants.

The Lords Justices said, the bill had been treated as for the specific performance of a contract by the defendants to purchase the land charged with the annuity, pursuant to notice. The bill was, however, by an equitable incumbrancer to enforce his incumbrance against purchasers deriving title through a prior incumbrancer, selling and conveying under a power reserved. It was therefore necessary to show that the dealings between the first incumbrancer and the purchasers had been fraudulent and improper, in order to support the

bill. And as no such issue had been raised by the present bill, it must be dismissed, but without costs.

Master of the Rolls.

Hooper v. Cooke. March 14, 1854.

INJUNCTION TO RESTRAIN ACTION OF EJECTMENT.—RIGHT OF OWNER OF RENT-CHARGE ON PROPERTY TO ENTER AND REPAIR AS AGAINST SUBSEQUENT INCUMBRANCER.

The owner of a rent-charge on premises which were in a dilapidated state and abandoned, had entered and repaired upon the rent-charge being in arrear, and the rent was insufficient to meet the expenses of repair and the arrears. The defendant, who was entitled to a subsequent rent-charge, then brought his action to obtain possession of the premises, and claimed that the plaintiff was not entitled to set-off in priority to his charge the expenses of repair: An injunction was granted to restrain the action on the plaintiff's undertaking to give judgment in the action, and to abide by the order of this Court as to damages.

It appeared that the plaintiff was entitled to a rent-charge of 4*l.* per annum on certain premises at Beacon Hill, Walcot, Somersetshire, under indentures dated in 1778, with power of entry and distress, and that in 1822, the then owner sold it to a Mr. Cruttwell, in consideration of a rent-charge of 40*l.* a year with power of entry and distress. The plaintiff's rent-charge was duly paid until 1841, but had since remained in arrear, and the premises being dilapidated and uninhabitable, the then owner, who was unable to repair, had abandoned the premises. The plaintiff, after various unsuccessful attempts to ascertain the owner's residence, had in 1845 entered into possession, and after a survey had repaired. The rents were, however, insufficient to meet the repairs and the arrears of rent-charge. The defendant, who was entitled to the rent-charge of 40*l.*, had, thereupon brought an action to recover possession of the premises, and contended that the plaintiff was only entitled to priority in respect of the arrears of rent-charge, and not of the repairs, and this motion was now made for an injunction to restrain such action.

Lloyd and Howe in support; *R. Palmer and Whitbread*, contra.

The Master of the Rolls said, the injunction must be granted—the plaintiff undertaking to give judgment in the action, and to abide by the order of this Court as to damages.

Vice-Chancellor Kindersley.

In re Bennett's Estate and South Eastern Railway Company. Jan. 13, 1854.

CONVEYANCING COUNSEL.—REFERENCE ON COMPULSORY PURCHASE OF LAND BY RAILWAY COMPANY.—JUDGE AT CHAMBERS.

On petition by the tenant for life, a reference

was directed to Chambers, in order to have an assignment of certain lands taken by a railway company, settled by one of the conveyancing counsel, under the 15 & 16 Vict. c. 80,—although the substance and not the form of the assignment was objected to.

This was a petition, on behalf of the tenant for life of certain lands taken by the above railway company, and the purchase-money of which had been paid into Court under the 8 & 9 Vict. c. 16, for the reference to the conveyancing counsel, under the 15 & 16 Vict. c. 80, of the draft assignment to be settled and approved, and for an order for payment of the dividends to the petitioner for life on its execution.

Glasse and Steer in support; J. Baily and G. Simpson, contra, on the ground the substance and not the form of the assignment was objected to.

The Vice-Chancellor said, that the matter would be referred to Chambers, and thence it would go before one of the conveyancing counsel.

Fowler v. Fowler. Feb. 8, 1854.

MASTERS' IN CHANCERY ABOLITION ACT.—INQUIRY AT CHAMBERS WHERE PRIOR REFERENCE TO MASTER.

Certain inquiries were directed to be taken at Chambers, under 15 & 16 Vict. c. 80, although a previous reference had been made to the Master, under which the proceedings were prosecuted before that Act came into operation.

This was an application to take at Chambers certain inquiries which had been directed in this suit, notwithstanding a reference had been previously made to the Master, under which the proceedings were prosecuted before the 15 & 16 Vict. c. 80 came into operation.

Steere in support; Cankrien, contra.

The Vice-Chancellor made the order as asked.

Commerell v. Bell. Feb. 20, 1854.

EQUITY JURISDICTION IMPROVEMENT ACT.—STATEMENT OF MARRIAGE AND BIRTH OF PARTIES INTERESTED.—SUPPLEMENTAL BILL.

Held, that the 15 & 16 Vict. c. 86, s. 53, does not apply where a decree has been made, or where the statement of the birth or marriage of parties interested seeks to bring them before the Court, but semble, it is necessary to file a supplemental bill.

This was an application for a direction to the Clerk of Record and Writs to file a statement under the 15 & 16 Vict. c. 86, s. 53, and the 44th Order of August 7, 1852, of the birth of children, and the marriage of a party interested under a will, the trusts of which were sought to be administered in this suit, and for the purpose of bringing them before the Court. It appeared that a decree had been made.

Hetherington in support.

Cur. ad. vult.

The Vice-Chancellor said, that the 53rd sec-

tion was not applicable where a decree had been made, nor even before decree, where it was thereby proposed to bring new parties before the Court, but that a supplemental bill must be filed. The application was therefore refused.

Balguy v. Broadhurst. March 11, 1854.

SECURITY FOR COSTS.—PLAINTIFF GOING ABROAD.

Where one of the plaintiffs went to Australia after bill filed, and it was not shown when he would return, or that it would be before the termination of the suit: an order was made to stay the proceedings until security was given for costs.

This was an application to stay the proceedings in this cause, or for security to be given for costs, on the ground of the departure from England to Australia of one of the plaintiffs in August, 1852.

G. Lake Russell in support; Amphlett, contra, on the ground it was not sworn the plaintiff intended to reside permanently abroad.

The Vice-Chancellor said, that as it was not shown distinctly when the plaintiff intended to return to this country, and there was no reason to suppose it would be before the termination of the suit, the order must be made as asked.

Vice-Chancellor Stuart.

Tottenham v. Emmett. March 11, 1854.

BILL.—DISMISSAL FOR WANT OF PROSECUTION.—PRACTICE.

Where a bill was filed according to the old practice for an injunction to restrain an action at law, and in which issue was joined and the evidence taken under the 15 & 16 Vict. c. 86: Held, that the defendant could not move to dismiss under the 114th Order of May 8, 1845, for want of prosecution, on the plaintiff not setting it down for hearing, but that he must proceed under the new practice (29th Order of Aug. 7, 1852), and set it down for hearing, upon which an order of dismissal would be made.

This was a motion, under the 114th Order of May 8, 1845, to dismiss for want of prosecution this bill, which had been filed for an injunction to restrain an action at law according to the old practice, and in which issue was joined and the evidence taken under the 15 & 16 Vict. c. 86. It appeared that the time for closing the evidence expired on January 11 last, but that the plaintiff had not set down the cause for hearing.

Horace Wright in support.

The Vice-Chancellor said, that the old practice did not apply, but that the defendant must set down the cause for hearing according to the present practice (29th Order of Aug. 7, 1852), and then take an order dismissing the bill. The motion was accordingly refused.

Vice-Chancellor Wood.**Hayward v. Price.** March 11, 1854.

EXAMINATION OF DEFENDANT.—WHERE ANSWERING EVASIVELY.—PRACTICE AT CHAMBERS.—JURISDICTION OF CHIEF CLERK TO COMMIT.

Where a party gives wilfully evasive answers on his examination, the Judge will take the examination himself, and if the party then continues the same conduct he will be committed.

The Chief Clerk had made an order on the defendant to attend at Chambers to be examined on certain interrogatories, and in default of so doing, or in case he should not then perfectly answer, to be committed to the Queen's Prison, and for the taxation of and payment to the plaintiff of his costs of three insufficient answers and examinations of the defendant. A motion was granted, with costs, for the discharge of the order.

This was a motion to discharge an order by the Chief Clerk at Chambers on the defendant to attend at Chambers to be examined on certain interrogatories, and in default of so doing, or in case he should not then properly answer, to be committed to the Queen's Prison, and for the taxation by the taxing Master of the plaintiff's costs of the three insufficient answers and examinations of the defendant, and for payment thereof by him to the plaintiff.

Rolt and Cole in support; *James and Heberden*, contra.

The Vice-Chancellor said, the orders of the Chief Clerk were all orders of the Judge, and if any of the parties expressed any dissatisfaction on any matter, it was always taken before the Judge. The Chief Clerk would never have made the present order unless by consent, but as such consent did not appear on the face of the order it was irregular. But in addition to this, the order for a committal could only be made on the 4th insufficient examination, and the proper course was to procure a certificate of such insufficiency, against which the party might appeal or appear and refuse any further answer, on the ground of the answer being sufficient. It would, however, be then necessary to obtain successive certificates, which would necessitate a delay of 36 days before the question could be finally adjudicated. The course in future would therefore be, whenever a party seemed to be giving wilfully evasive answers, for the Judge to take the examination himself, and then if the party continued the same conduct, he had clearly authority to commit. The order must be discharged, and as there was the case of *Alfrey v. Alfrey*, 12 Beav. 620, with costs.

Court of Queen's Bench.**Birch v. Foster.** Jan. 14, 1854.

ACTION FOR LIBEL.—SECURITY FOR COSTS.—TEMPORARY RESIDENCE IN THIS COUNTRY.

The plaintiff, a resident in Dublin, but resid-

ing in this country for a short while though not regularly domiciled, was held not liable to give security for costs in an action against the defendant, the proprietor of a newspaper, for libel, and the rule to stay proceedings until security were given, was discharged, with costs.

A RULE nisi had been obtained on Nov. 12 last, for the proceedings in this action, which was brought by a resident in Dublin against the proprietor of the Examiner for libel, to be stayed until he should give security for costs. It appeared the plaintiff was resident for a short while in this country, but was not regularly domiciled.

The plaintiff in person showed cause; Attorney-General consented to discharge the rule without costs.

The Court, however, said, it must be discharged with costs.

Regina (ex parte Poor Law Guardians of Bately Bridge) v. Justices of Yorkshire, W. R. Jan. 30, 1854.

MANDAMUS ON JUSTICES TO ISSUE DISTRESS WARRANT FOR POOR-RATE.—LIABILITY IN RESPECT OF EXPENSES BEFORE OVERSEERS APPOINTED.—RETURN.

A rule was made absolute for a mandamus on justices to issue a distress warrant to enforce the payment from a township forming part of a union, of the amount of a contribution towards a poor-rate, which they had objected to pay, on the ground that it included disbursements during several years before the overseers were appointed—the question at issue to be discussed on the return.

A RULE nisi had been granted on Nov. 24 last, for a mandamus on the above justices, to issue a distress warrant to enforce the payment from the overseers of Beverley, one of the seven townships forming the above union, of the amount of a contribution towards a poor-rate, which they had objected to pay, on the ground it included disbursements during several years before the present overseers were appointed. An information was laid before the special Sessions upon the Poor Law Board having decided the warrant should issue, and the justices had accordingly consented thereto, but required the direction of this Court, under the 11 & 12 Vict. c. 44, s. 5, before signing the warrant.

By the 2 & 3 Vict. c. 84, s. 1, it is enacted, that "in every case in which any contribution by overseers or other officers of any parish of moneys required by the board of guardians or persons acting as guardians for such parish, or for any union which shall include such parish, for the performance of their duties, shall be in arrear, it shall be lawful for any two justices acting within the district wherein such parish shall be situate, on application under the hand of the chairman of such board, to summon the said overseer or other officers to show cause, at a special Sessions to be sum-

assessed for the purpose, why such contribution has not been paid, and after hearing the complaint preferred under the authority of such chairman or acting chairman, and on behalf of such board, if the justices of such Session shall think fit, by warrant under their hands and seals, to cause the amount of the contribution so in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the said overseers or other officers, or any of them, in like manner as moneys assessed for the relief of the poor may be levied and recovered."

W. H. Watson and Overend for the overseers, showed cause against the rule; *T. Jones* for the justices; *Sir F. Theiger, Büss, Addison, and Hall*, in support.

The Court made the rule absolute for a mandamus—the question at issue to be raised on the return.

Court of Common Pleas.

Doe d. Croft and others v. Tidbury. Nov. 9, 1853; Jan. 31, 1854.

EJECTMENT.—CONVEYANCE OF COTTAGES BUILT ON ENCROACHMENTS ON MANOR.—STAMP.

On special case, it appeared that a joint and several conveyance had been made of certain cottages, built on encroachments upon a manor, to the plaintiffs as trustees for the lord and commoners, reserving a life estate to the parties. One of the parties to the conveyance died having conveyed to the defendant. An objection was overruled in an action to recover possession of such cottage, that the deed required as many stamps as there were several interests to be conveyed, and judgment was given for the plaintiffs.

In this special case it appeared that certain cottages had been built on encroachments upon the manor of Greenham, and that a joint and several conveyance thereof had been made to the plaintiffs as trustees for the lord and the commoners of the manor, reserving a life estate to such parties. In an action which was brought to obtain possession of one of these cottages, on the death of one James Tidbury, a party to the conveyance, but who had conveyed to the defendant in 1841, the deed was admitted in evidence, and an objection was overruled that it required as many stamps as there were several interests conveyed.

Self for the plaintiffs; *Dowdeswell* for the defendant. *Cur. ad. vult.*

The Court held, that the plaintiffs were entitled to judgment.

Court of Exchequer.

Bracegirdle v. Hicks. Jan. 27, 1854.

CONTRACT FOR CARRIAGE OF TIMBER.—CONSIDERATION.—BREACH.—ACTION OF DEBT.

The defendant agreed to carry for the plaintiff certain timber to D., in consideration that the plaintiff should carry a similar

quantity for the defendant: Held, that on a breach of the agreement, the plaintiff's remedy was by action for the defendant's breach of the contract to carry the timber, and not in debt to recover for the carriage of the timber.

THIS was a rule nisi to set aside the verdict for the plaintiff and enter a nonsuit in this action, which was in debt, to recover for the carriage of certain timber to Derby, but on the trial it appeared that the consideration for the agreement was, that the plaintiff should carry a like quantity for the defendant.

Lusk showed cause against the rule; *J. Addison* in support, was not called on.

The Court said, that the evidence did not support the declaration, *Harrison v. Lake*, 14 M. & W. 139, but that the plaintiff's remedy was by action for the defendant's breach of contract to carry a similar quantity of timber. The rule was therefore made absolute.

Griffiths v. Selby. Jan. 28, 1854.

JUDGE'S ORDER TO PLEAD SEVERAL MATTERS.—RULE STRIKING OUT PLEA RAISING ISSUE COVERED BY TRAVERSE.

The defendants traversed the plaintiff's readiness and willingness to supply such goods as they might require for their patent, in an action to recover damages for breach of an agreement whereby they agreed to purchase from the plaintiff all the goods they should require for their patent: Held, that such traverse involved the issue of such goods being fit and proper, and a rule was made absolute to strike out a plea setting up such defence.

THIS was a rule nisi granted on January 19 last, to rescind part of the order of *Martia, B.*, on a summons for leave to plead several matters, to this action which was brought to recover damages for breach of an agreement whereby the defendants agreed to purchase from the plaintiff all the wrought iron goods they might require for the working of their patent for coating such goods with glass, at a fair and reasonable price, and the declaration alleged the plaintiff's readiness and willingness. The defendants claimed to plead (*inter alia*) a traverse of the readiness and willingness, and also that the goods which the plaintiff was so ready and willing to manufacture and to sell and deliver, were not reasonably fit for the working of their patent.

Field showed cause against the rule, which was supported by *Bittleston*.

The Court, after overruling a preliminary objection that the plea could not now be objected to under the 15 & 16 Vict. c. 76, s. 83, said, that the question of the goods being fit and proper was involved in the issue of the plaintiff being ready and willing to supply the defendants with such goods as they might require for their patent, and that the rule would therefore be made absolute to strike out the latter plea.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, MARCH 25, 1854.  
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LEGAL EDUCATION.

LITERARY AND SCIENTIFIC EXAMINATIONS.

MUCH interest being excited at the present time, on the subject of the preliminary and professional education of attorneys, we have received several inquiries relating to the contemplated examination of candidates for the roll, as well on their *literary* and *scientific* attainments as their *legal* knowledge in the essential departments of Common and Statute Law and Practice; the Law of Property, real and personal, and Conveyancing, and the principles and practice of Equity. Some newspaper paragraphs have been referred to¹ regarding the improvements about to be made at the Inns of Court for examination, and testing the competency of applicants for admission to the Bar, and it has been hailed by the writers of these paragraphs as a subject of congratulation that the Council of the Incorporated Law Society has resolved to *follow* this meritorious example.

We have always advocated the united interests of the whole Profession, comprising all branches of the Profession—Bench, Bar, and general Practitioner; but whilst thus upholding the well-being of the Profession at large, it has been our duty for upwards of twenty years more especially to watch and promote the status and just interests of the attorneys and solicitors who are not really and truly represented by any other Journal. We cannot, therefore, refrain from stating in behalf of the larger branch of the Profession, that upwards of twenty years ago they instituted lectures on the several branches of the Law, and soon after obtained power to examine all the candidates for admission on the roll. The members of the Incorporated Law Society have expended nearly 100,000*l.* in purchasing

an extensive site in Chancery-lane, erecting useful buildings, and forming a library of great value and importance.¹

The Council of the Incorporated Law Society cannot, therefore, be reproached with any "backwardness in coming forward" to advance the interests of their brethren. Since the foundation of the Library in 1831, the establishment of the Lectures in 1833, and the examination of candidates for admission on the roll in 1836, they have incessantly exerted themselves in promoting whatever might be useful to the Profession in general. Besides the liberal arrangement recently made for the admission of all approved members to the advantages of the Society for a small fee of 5*l.* and an annual subscription of 2*l.*, the Council have on all occasions encouraged the means of improving the rising generation of attorneys and solicitors, and endeavoured to restrain irregularity of professional conduct, and to secure fair and honourable practice throughout the Profession.

The course hitherto adopted on the part of the attorneys and solicitors has met with the approbation of the Judges, and the sanction of the Legislature, and we cannot doubt that the Incorporated Law Society, acting in conjunction with the several Provincial Law Societies, will continue their onward progress, and exert their influence still farther to improve the status and well-being of their branch of the Profession.

Whatever may be the nature of the general examination in addition to the legal, the candidates, who have made inquiries on the subject, may rely that ample notice will be given of the suggested alterations.

¹ Less than one-fourth of the London attorneys in a short time subscribed 50,000*l.* for these important objects.

We have been asked particularly whether the additional examination will be commenced so early as Michaelmas Term next, and we have no hesitation in expressing a confident opinion that it will not take place for at least 12 months to come; and, moreover, it must be a grave question whether any person now serving under articles of clerkship can properly be subjected to a classical or mathematical examination.

It should be recollected also, that the change, whenever it takes place, will have to undergo the revision of various authorities. In addition to the members of the Council of the Incorporated Law Society, the 15 Masters of the Superior Courts of Common Law are in rotation *ex officio* examiners, and will, of course, be consulted on the subject. After the Council have settled the improvements which they recommend, we presume they will make their report to the general meeting of the members of the Society; and to the country Law Societies. If the proposition should be approved, the whole must then be submitted to the Master of the Rolls, and the Common Law Judges. The Act of Parliament, 6 & 7 Vict. c. 73, authorises the Judges and the Master of the Rolls, either separately or jointly, to appoint examiners for conducting the examination of persons applying to be admitted as attorneys and solicitors, "as well touching the articles and service, as the fitness and capacity of such persons to act as attorneys and solicitors." To the Judges and Master of the Rolls, therefore, the alterations must be submitted, and they of course will consider to what extent they are empowered to carry the proposed improvements under their own rules and regulations, and what part, if any, of the plan will require the sanction and authority of Parliament.

We apprehend it is beyond all doubt that the Judges cannot make an order restraining attorneys and their articulated clerks from entering into contracts to serve the time required by the present Act of Parliament, and subjecting the clerk to a previous examination in classics, mathematics, and other branches of general learning; but though we think that they cannot control the commencement of the contract, they may, to a limited extent, declare, that an attorney or solicitor, before he is *actually admitted*, shall not only be able to answer the usual legal questions, but other questions on general subjects connected with the Profession, and without a knowledge of which it may be said he is not

"fit and capable" to discharge his duties. How far this may be practically construed, it is not easy to determine. It might be contended, not unreasonably, that an attorney should be able to translate the general maxims of the law, whether in Latin or French, especially as an acquaintance with those languages would be necessary for the purpose of understanding our ancient records, law reports, charters, deeds, and other instruments.

We have heard that some of the candidates have not shown a very perfect knowledge of the rules of orthography and syntax in their own language, and doubtless it might be required, even under the present method of examination, that the candidates should make no mistake in these essential particulars. It will be admitted, also, that an accurate knowledge of arithmetic, and some skill in the art of bookkeeping, are of much importance, if not essential, to the practitioner, because a large portion of his duty may consist in the investigation of commercial and other accounts and in calculations of the value of property, annuities, reversions, interest, &c. Neither would it be unreasonable to expect that the candidate should be acquainted at least with so much of English history as bears upon the progress of our own laws and constitution. Thus far, we think, the most determined conservative of ancient rules may be expected to go: how much further we cannot venture to predict.

It will, of course, be understood that we are here offering no official intelligence on this subject, but merely, for the sake of those who have consulted us, drawing our conclusions from the state of the question as discussed amongst well-informed persons who are interested in the result, and have long considered the suggested improvements, —having regard to the practicability of, and the means by which the alterations are to be carried into effect. Doubtless, it will be duly considered by the proper authorities, whether it is expedient to attempt the "large measure" of improvement for which many contend, or to proceed in a more gradual course by increasing the extent and strictness of the qualifications from time to time, as, we believe, was done in the medical profession.

At all events,—looking at the practice which has been hitherto pursued by the examiners,—we think there can be no doubt that at present it is unnecessary for the candidates to prepare for any other than the usual examination on legal subjects,

which, they are aware, comprises the Law of Property and the Practice of Conveyancing, with the other important branches of Common and Statute Law, the Principles of Equity, and the Practice of the Superior Courts.

It has been confidently anticipated in some quarters, that the reduction of the Stamp Duty on Articles of Clerkship which the Chancellor of the Exchequer thought proper to make (certainly unasked, if not in direct opposition to the wishes of the Profession) will occasion a large influx of candidates for the roll of an inferior class to the present, and of a lower grade in scholastic attainments. If this conjecture should be correct, it is obvious that the proper remedy will be to institute an examination before the Articles of Clerkship are allowed to be registered, and to require certificates of proficiency in certain departments of general knowledge to be produced to the satisfaction of the examiners.

This preliminary examination might take place in London, before one of the Professors of King's College or University College, or the Head Master of one of the public schools; and in the country before the masters of similar colleges or schools. The general course and extent of the examination, we may presume, would be settled by the Judges, and the form of the certificates would be sufficiently specific to ensure a careful discharge of the duty.²

To the credit of many of the candidates for future examinations, we learn that they have no objection to an inquiry into their general as well as legal knowledge; but in fairness require that they should have sufficient notice to enable them to refresh their memories, and to know with some degree of precision to what branches of learning the preliminary examination will extend.

SECOND COMMON LAW PROCEDURE BILL.

HAVING 1st laid before our readers all the clauses of this Bill which relate to the examination of the parties before trial, and to compulsory arbitrations in matters of account; 2nd. The clauses regarding evidence and the examination of witnesses; 3rd. The proceedings on motions and summonses; we proceed now to the other general heads of the Bill.

IV. OF THE TRIAL AND JURY.

The clause empowering the Judge to try

² Adequate fees would, of course, be paid to these collegiate or scholastic examiners.

questions of fact, *without a Jury*, is as follows:—

The parties to any cause may, by consent in writing, signed by them or their attorneys, as the case may be, leave the decision of any issue of fact to the Court, provided that the Court, upon a rule to show cause, or a Judge on summons shall, in their or his discretion, think fit to allow such trial; or provided the Judges of the superior Courts of Law at Westminster shall, in pursuance of the power hereinafter given to them, make any general rule or order dispensing with such allowance, either in all cases or in any particular class or classes of cases to be defined in such rule or order; and such issue of fact may thereupon be tried and determined in open Court, either in term or vacation, by any Judge who might otherwise have presided at the trial thereof by Jury, either with or without the assistance of any other Judge or Judges of the same Court; and the verdict of such Judge or Judges shall be of the same effect as the verdict of a Jury, save that it shall not be questioned upon the ground of being against the weight of evidence; and the proceedings upon and after such trial, as to the power of the Court or Judge, the evidence, and otherwise shall be the same as in the case of trial by jury; s. 1.

It is next provided that one of the Judges may try causes in the same Court, whilst the Chief Justice or Chief Baron is sitting.

It shall be lawful for any one of the Judges of any of the Superior Courts at Westminster, at the request of the Lord Chief Justice or Lord Chief Baron, to try the causes entered for trial at Nisi Prius in Westminster and London in either of the Courts, on the same days on which the said Lord Chief Justice or Lord Chief Baron, or any other Judge of the same Court, shall be sitting to try causes at those places respectively, or at either of them, so that the trial of two causes may be proceeded with at the same time; and all jurors, witnesses, and other persons, who may have been summoned or required to attend at, or for the trial of any cause, before the said Lord Chief Justice or Lord Chief Baron, as the case may be, shall give their attendance at and for the trial thereof before such other Judge as may be sitting to try the same by virtue of this Act; and it shall be lawful for the associates and other officers of the Lord Chief Justice or Lord Chief Baron, as the case may be, to appoint from time to time fit and proper persons, to be approved by the said Lord Chief Justice or Lord Chief Baron, to attend for them and on their behalf respectively before such Judge; and the trial of every cause which shall be so had by virtue of this Act, shall, if necessary, be entered of record, as having been had before the Judge, by whom such cause in fact was tried; s. 2.

With regard to the *Jury*, the following are the clauses relating to their qualification,

service, and their discharge after a limited time :—

The value, on which the rating or assessment to qualify householders to serve as jurors in any county shall hereafter be taken, shall be not less than thirty pounds; s. 11.

In every county, except London and Middlesex, the jurors summoned by the sheriffs under the precepts issued by the Judges of Assize for the trial of all issues, whether civil or criminal, shall be hereafter chosen indiscriminately from the class of persons qualified to serve as special jurors and from the class of persons qualified to serve as common jurors; and the panel of common jurors shall be made up in like manner; but nothing herein contained shall affect the right to try by special jury; s. 12.

The sheriff or under-sheriff shall, from time to time register, according to the present practice, the service of the persons who shall be summoned and shall attend to serve as jurors under this Act, and also the time of their services; and every person so summoned under this Act, and having duly attended or served until discharged by the Court, shall (upon application by him made to such sheriff or under-sheriff before he shall depart from the place of trial) receive a certificate testifying such his service, which certificate the sheriff or under-sheriff is hereby required to give on payment of one shilling; and such certificate shall have the same force and effect, as to exempting such person from serving again upon common juries within certain periods, and as to the respective periods of exemption, as the certificates heretofore given to common jurors who have served before the Judges of Assize; s. 13.

If, upon the trial of any cause, the jury are unable to agree upon a verdict, they shall not be kept in deliberation for a period of more than twelve hours, unless at the expiration of that period they unanimously desire further time; and they may during such time be furnished with fitting accommodation and necessary refreshment by leave of the Judge; and at the expiration of such time, if they cannot agree, they shall be discharged, and an entry of the fact of such discharge shall be made upon the back of the record; and the costs of such abortive trial shall be costs in the cause; s. 14.

When any jury has been so discharged, it shall be competent for either of the parties to proceed to try the cause, by consent, at the same sittings or assizes, or, if there be no such consent, then at any future sittings or assize, in the same manner as if the abortive trial had not taken place; s. 15.

The several Courts or any Judge thereof may make all such rules or orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury, for the trial of any cause or matter depending in such Courts, at such time and place and in such manner as they or he may think fit; s. 59.

The speeches of Counsel at the Trial are regulated by the 16th section; and the power of the Judge in certain cases to adjourn the trial by section 17.

Upon the trial of any cause the addresses to the jury shall be regulated as follows: The party who begins, or his counsel, shall be allowed, in the event of his opponent not announcing at the close of the case of the party who begins, his intention to adduce evidence, to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his counsel, shall be allowed to open the case, and also to sum up the evidence (if any); and the right to reply shall be the same as at present; s. 16.

It shall be lawful for the Court or Judge, at the trial of any cause, where they or he may deem it right for the purposes of justice, to order an adjournment for such time and subject to such terms and conditions as to costs, and otherwise, as they or he may think fit; s. 17.

V. SPECIAL CASES.

It shall be lawful for the Court in which any special case is argued to add thereto, if they shall think fit, any inferences of fact which they may think it right to draw from the facts stated; and such inferences shall be taken as part of the case, and be binding upon the parties in a Court of Error; s. 31.

Error may be brought upon a judgment upon a special case, in the same manner as upon a judgment upon a special verdict, unless the parties agree to the contrary; and the proceedings for bringing a special case before the Court of Error shall, as nearly as may be, be the same as in the case of a special verdict; and the Court of Error shall either affirm the judgment or give the same judgment as ought to have been given in the Court in which it was originally decided; s. 30.

VI. NEW TRIALS, WRITS OF ERROR, AND APPEALS.

The provisions relating to New Trials, Writs of Error, and Appeals, are as follow :—

In every rule *nisi* for a new trial or to enter a verdict or nonsuit, the ground upon which such rule shall have been granted shall be stated therein; s. 32.

If upon any motion for a new trial, or to enter a verdict or nonsuit, the rule to show cause be refused, the party applying for such rule may appeal; s. 33.

If a rule *nisi* granted upon any such motion is discharged or made absolute, the party decided against may appeal; s. 34.

The Court of Error, the Exchequer Chamber, and the House of Lords shall be Courts of Appeal for the purposes of this Act; s. 35.

No appeal shall be allowed unless notice thereof be given in writing to the opposite

party or his attorney, and to one of the Masters of the Court, within four days after the decision complained of, or such further time as may be allowed by the Court or a Judge; s. 36.

Notice of appeal shall be a stay of execution, provided bail to pay the sum recovered and costs be given, in like manner and to the same amount as bail in error, within eight days after the decision complained of, or before execution delivered to the sheriff; s. 37.

The appeal hereinbefore mentioned shall be upon a case to be stated by the parties (and in case of difference, to be settled by the Court or a Judge of the Court appealed from), in which case shall be set forth so much of the pleadings, evidence, and the ruling or judgment objected to, as may be necessary to raise the question for the decision of the Court of Appeal; s. 38.

When the appeal is from the refusal of the Court below to grant a rule to show cause, and the Court of Appeal grant such rule, such rule shall be argued and disposed of in the Court of Appeal; s. 39.

The Court of Appeal shall give such judgment as ought to have been given in the Court below; and all such further proceedings may be taken thereupon, as if the judgment had been given by the Court in which the Record originated; s. 40.

The Court of Appeal shall not reverse any judgment in matters of discretion only, as on the ground that the verdict was against the weight of evidence, or otherwise; s. 41.

The Court of Appeal shall have power to adjudge payment of costs, and to order restitution; and they shall have the same powers as the Court of Error in respect of awarding Process and otherwise; s. 42.

Upon an award of a trial *de novo* by any one of the Superior Courts or by the Court of Error, upon matter appearing upon the record, error may at once be brought; and if the judgment in such or any other case be affirmed in error, it shall be lawful for the Court of Error to adjudge costs to the defendant in error; s. 43.

When a new trial is granted, on the ground that the verdict was against evidence, the costs of the first trial shall abide the event, unless under special circumstances the Court shall otherwise order; s. 44.

VII. EXECUTIONS, ATTACHMENT, &c.

The powers relating to the examination of the judgment debtor, the attachment of debts and recovering the amount from the garnishee, are as follow:—

It shall be lawful for any creditor who has obtained a judgment in any of the Superior Courts, to apply to the Court or a Judge for a rule or order that the judgment debtor should be orally examined as to any and what debts are owing to him, before a Master of the Court, or such other person as the Court or Judge shall appoint; and the Court or Judge may make such rule or order for the examination

of such judgment debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner, as in the case of an oral examination of an opposite party before a Master under this Act; s. 60.

It shall be lawful for a Judge, upon the *ex parte* application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his attorney, stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Judge or a Master of the Court, as such Judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt; s. 61.

Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Judge shall direct, shall bind such debts in his hands; s. 62.

If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt, or if he does not appear upon summons, then the Judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from such garnishee towards satisfaction of the judgment debt; s. 63.

If the garnishee disputes his liability, the Judge, instead of making an order, that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the garnishee by writ, calling upon him to show cause why there should not be execution against him for the alleged debt, or for the amount due to the judgment debtor, if less than the judgment debt, and for costs of suit; and the proceedings upon such suit shall be the same, as nearly as may be, as upon a writ of revivor issued under "The Common Law Procedure Act, 1852;" s. 64.

Payment made by, or execution levied upon, the garnishee under any such proceedings as aforesaid, shall be a valid discharge, as against the judgment debtor, to the amount paid or levied, although such proceeding may be set aside, or the judgment reversed; s. 65.

In each of the Superior Courts there shall be kept at the Master's Office a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise, and the mode of keeping such books shall be the same in all the Courts; and copies of any entries

made therein may be taken by any person, upon application to any Master; s. 66.

The costs of any application for the attachment of debt under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge; s. 67.

The clauses relating to *Mandamus* and *Prohibition*, and some other matters, must be deferred to the next Number.

CHARITABLE TRUSTS.

ORDERS FOR REGULATING PROCEEDINGS BEFORE THE COUNTY COURTS.

WHEREAS, in pursuance of "The Charitable Trusts' Act, 1853," certain orders were, on the 8th day of December, 1853, made by me for regulating proceedings by and before the Judges of the County Courts, and for fixing and determining the fees to be taken in respect of such proceedings, and such orders were limited to be in force until further orders should be made for regulating such proceedings as aforesaid: Now, seeing fit to make such further orders, I hereby revoke the said orders of the 8th day of December, 1853: And, in pursuance of "The Charitable Trusts' Act, 1853," I hereby direct that the orders hereinafter mentioned shall be used in the County Courts for regulating proceedings by and before the Judges of the County Courts, and for fixing and determining the fees to be taken in respect of such proceedings until further orders shall be made by me for the same purpose, under "The Charitable Trusts' Act, 1853."

March 6, 1854.

CRANWORTH, C.

1. The clerk of every County Court shall keep a book, to be called "The Charitable Trusts' Book," in which all proceedings taken in that Court in matters of Charitable Trusts shall be recorded in the form in the Schedule hereunto annexed.

2. *Proceedings by private persons.*—When any person has obtained the required order or certificate from the Charity Commissioners, and he is desirous of taking proceedings in the County Courts, he shall produce such order or certificate to the clerk, who shall retain and file the same in numerical order in his office, and the party producing such order or certificate shall be deemed the plaintiff in such proceedings and the persons served with a summons under Order 4, shall be deemed the defendant.

3. *Proceedings by Attorney-General.*—When the Attorney-General shall propose to take proceedings in the County Court, he shall cause to be delivered or transmitted to the clerk a written statement showing the nature and object of the proposed proceedings, and the clerk shall retain and file such statement in numerical order in his office, and the Attorney-

General shall in such proceedings be deemed the plaintiff; and the person served with a summons under Order 4, shall be deemed the defendant.

4. *Summons.*—Upon the production of any order, certificate, or statement hereinbefore mentioned, the clerk shall at the instance of the plaintiff prepare a summons thereon in the form set forth in the Schedule hereunto annexed, in which shall be stated the substance of the order, certificate, or statement, and he shall make as many copies thereof as there are parties required by the plaintiff, in writing, to be summoned, and two additional copies, the one to be filed in the clerk's office, and the other to be transmitted to the Charity Commissioners.

5. *Notice to attend proceedings.*—The clerk, if required by the plaintiff, shall prepare a notice to attend proceedings in the form set forth in the said Schedule to be served on any persons indicated by the plaintiff, in writing, besides those summoned under the last preceding order, and the said clerk shall make as many copies thereof as there are persons to whom such notice is to be given, and two additional copies, one to be filed in his office, and the other to be transmitted to the Charity Commissioners.

6. *Service of summons, and notice to attend proceedings.*—The clerk shall forthwith transmit by pre-paid post letter a copy of the summons to each of the parties required to appear; and a copy of the notice to attend proceedings to each of the persons indicated by the plaintiff, and such transmission shall be sufficient service, unless the Judge shall in any case otherwise direct.

7. *Notice of hearing.*—Where the plaintiff does not require any summons or notice to attend proceedings to be issued, the clerk shall prepare a notice of hearing, in the form set forth in the said Schedule, and two additional copies thereof, one to be filed in his office, and the other to be transmitted to the Charity Commissioners, and shall either deliver such notice to the plaintiff, or cause it to be served on him by pre-paid post letter, unless the Judge shall in any case otherwise direct.

8. *Summons and notices to be issued in certain cases.*—In all cases it shall be competent for the clerk, if required by the plaintiff, to summon some persons, and to serve others with either or both of the said notices, or to serve a notice of hearing on the plaintiff, and a notice to attend proceedings on any other person.

9. *Judge's power.*—In all cases, it shall be competent for the Judge to direct in any case what persons, or additional persons, shall be served with a summons or notice to attend proceedings or notice of hearing.

10. *Judge's note in ordinary cases.*—Upon the requisition of the Charity Commissioners, a copy of the Judge's note of the evidence taken at the hearing, or such part thereof as may be required by the Commissioners, shall be transmitted under the seal of the Court by

the Judge to them at their office by post or otherwise.

11. *Judge's note where Attorney-General proceeds.*—Upon the requisition of the Attorney-General in proceedings instituted by him, a copy of the Judge's note of the evidence taken at the hearing, or such part thereof as may be required by the Attorney-General, shall be transmitted under the seal of the Court to him by post or otherwise.

12. *Copy of proceedings to be sent to Commissioners.*—A copy of the summons, notice to attend proceedings, notice to appear, together with a copy of the order made by the Court, shall in all cases be transmitted by the clerk, forthwith after the hearing, by post or otherwise, as the Judge shall direct, to the office of the Commissioners.

13. *Fees where income of charity exceeds 10l.*—Where the annual income of the charity exceeds 10l., the Court fees shall be payable as in cases wherein the ordinary jurisdiction of the Court, without prejudice to the privilege of the Attorney-General as to costs, and the charitable funds may be made liable to the payment thereof, at the discretion of the Judge.

14. *Fees where income does not exceed 10l.*—Where the annual income of the charity does not exceed the sum of 10l., no fees of Court shall be payable out of the funds of the charity; nor shall any fees be paid by any party to the proceeding, unless the Judge shall, in his discretion, order any of the parties to the proceedings before him to pay such fees of Court as he shall think fit, without prejudice to the privilege of the Attorney-General as to costs.

15. *Fees where several charities join.*—Where more than one charity is joined in one application, one set of Court fees only shall be payable, such fees to be calculated on the aggregate amount of the incomes of the charities so joining.

16. *Fees how calculated.*—Where Court fees are payable, they shall be calculated according to the scale of fees applicable to proceedings for the recovery of tenements under the 9th and 10th Vict. cap. 95, sect. 122, the annual income of the charity, like the annual rent of the tenement, being treated as the basis of calculation.

17. *Who may appear at hearing.*—At the hearing, any person who has been summoned, or has received notice to attend proceedings, or who is authorised to apply under sect. 43 of "The Charitable Trusts Act," 1853, may appear, and shall be heard to oppose the application authorised by the order or certificate of the Commissioners, or the statement of the Attorney-General, subject to the payment of such costs as the Judge shall direct.

18. *Effect of Commissioners' order or certificate, or Attorney-General's statement.*—The order or certificate of the Commissioners, or statement of the Attorney-General, as to the amount of the annual income, shall be conclusive on the Court, and the other statements contained in the certificate or order of the

Commissioners, or the statement of the Attorney-General shall, unless disputed, be taken as true.

19. *Appeal.*—Where any person is desirous of appealing against an order made by the Court in any matter of a charity, he shall, within one calendar month after making such order, give notice in writing, stating the grounds of such intended appeal, to the Court; and such notice may be served, by post or otherwise, on the clerk of the said Court at his office.

20. *Forms.*—The Forms contained in the Schedule may be varied by the Court, according to the circumstances of each case.

21. *Practice to continue, subject to these orders.*—The enactments, Secretary of State's orders, practice, and forms in force and used in the County Courts shall, subject to the foregoing orders, be adopted with reference to proceedings in matters of Charitable Trusts, so far as the same are applicable, *mutatis mutandis*.

22. *Clerk's duties as to Trustees' accounts.*—The accounts of Trustees of Charities, when delivered to the Clerk of the County Court, shall be filed by him in numerical order, and annually indexed alphabetically according to the titles of such charities, or the names or description by which they are known, or may be identified.

MERCANTILE LAWS OF ENGLAND AND SCOTLAND.

PROPOSED ASSIMILATION AS TO DISHONOURLED BILLS OF EXCHANGE.

ON the 13th instant, Lord Brougham brought the subject of the dissimilarity of the English and Scotch Law relating to dishonoured bills of exchange before the House of Lords. He said, the law at present in force in Scotland with regard to bills of exchange and promissory notes dated from the year 1682; it then however only referred to Scotch bills, but in 1690 it was extended to English bills, and in 1772 it was made complete by being made to refer to drawers as well as acceptors, which was not formerly the case.

The effect of this law was that while in England, if a bill were dishonoured, the only remedy which the holder had was by an action at law, giving the drawer all the advantages of the law's delays to put off or escape payment; in Scotland the holder of a protested bill had only to register it, and by that simple operation he at once put a stop to all dealings with his debtor's property, and in six days afterwards he was entitled to execution against his property and person. To provide, however, against mistakes and frauds, there was a process of suspension of execution, after which the matter would have to be decided before a tribunal in the regular manner; but before he could obtain the advantage of that, the defaulting party had to give security for the debt, and the costs as well.

He fully believed that the great increase which had taken place in the commerce of Scotland within the last 60 or 70 years had been eminently assisted by this admirable provision of the law. In the year 1849 there had been 4,749 cases of bills being registered in this manner, and in the year 1853, which was a year of commercial prosperity, there had been 2,470, of which about one per cent. had been resisted, and very few of those successfully so.

It might be possible to introduce this provision into the English law by an alteration in the Common Law Procedure Bill, and he should merely ask that the Bill he (Lord B.) then proposed should be read a first time, and should postpone the second reading so as to give his noble and learned friend (the Lord Chancellor) an opportunity of considering this suggestion.

The Lord Chancellor said he did not propose to send the Common Law Procedure Bill to a Select Committee until the Lord Chief Justice returned from circuit, and could give the benefit of his assistance in that committee. When that committee sat, he thought it would be better that the Bill just introduced should be referred to it. In the meanwhile he would simply suggest that the Bill ought to be circulated as much as possible in the commercial community of the city of London, proposing, as it did, so great an alteration in the character of bills of exchange, an alteration in fact which might possibly have the result of putting a stop in a great degree to the giving of them.

[The Bill has not yet been printed.]

NOTICES OF NEW BOOKS.

The Queen on the prosecution of Sir James Brooke, K.C.B., against the Eastern Archipelago Company, containing the Judgments of the Queen's Bench and the Exchequer Chamber, together with Two Articles from the "Times" newspaper on the merits of the case: Clowes and Son. 1853. Pp. 97.

THIS is a pamphlet issued, as it appears by the attorneys for the prosecution, Messrs. Phillips and Voss, and contains a full report of this important action of *sci. fa.* to repeal the letters patent of incorporation granted to the defendants, and in which judgment was given for the Crown, affirmed on appeal to the Exchequer Chamber, on the 22nd of November last.

The Principles of Commerce and Commercial Law, explained in a course of Lectures delivered by SIR GEORGE STEPHEN, Barrister-at-Law. Crockford. 1853. Pp. 269.

THE learned author states that this is a

first attempt towards carrying out a comprehensive scheme for a mercantile school, and of conveying to the student the principles of commerce in a didactic form.

The contents are as follow:—

- Lecture, 1. Introductory.
- 2, 3. On Brokers.
4. Bills of Exchange.
- 5, 6. On Discount.
7. Accommodation Bills.
- 8, 9. Shipping.
10. Demurrage.
- 11, 12, 13. Insurance.
14. Customs.
15. Clearance.
16. The Law of Sale.
- 17, 18. Exchanges.
19. Banking System.
20. Bookkeeping.
21. Partnership.
22. Markets and Prices.
23. Arbitration and Bankruptcy.
24. Credit.

We strongly recommend a perusal of these Lectures to such of our readers as are concerned in commercial affairs, in order to acquire an insight into the "principles of commerce and commercial law." The volume is written with the accustomed force, clearness, and talent, which distinguish all the works of our learned friend.

An Examination of the Law of Church-rates, shewing that the parish is under no legal obligation to repair the Church. By WATKINS WILLIAMS, of the Inner Temple, Student-in-Law. Ridgway. 1854. Pp. 36.

These Letters were originally published in the Carnarvon and Denbigh Herald, and are now reprinted with additional notes upon Tithes and other subjects. The author states in his Introduction, that they were "not written in defence of any party or of any particular view," but to point out the present system of law upon the question of the liability of the parishioners to repair the church.

LAW OF ATTORNEYS AND SOLICITORS.

PAYMENT OF SUM FOUND DUE.—COSTS OF PROCEEDINGS TO COMPEL PAYMENT.

A SUM of money was found due by the certificate of the Taxing Master from certain solicitors. An order had been made substituting service of the copy certificate at their offices and private residences, and

for demand of payment there. On motion for the short order for payment and delivery up and deeds and papers, the *Master of the Rolls* said,—“I think the applicant is entitled to the order. He has done all that is required by the order for substituting service. I give no opinion, whether it is necessary to leave a copy of the power of attorney; but if such be the practice, it is new both to me and the registrar. On the authority of *Re Bainbrigge*, 13 Beav. 108, 14 Beav. 645, the solicitors must pay all the subsequent costs in compelling payment.” *In re Dufaur and Blakeney*, 16 Beav. 113.

POINTS IN COMMON LAW PRACTICE.

TRIAL, POSTPONING.—DEFENDANT OUT OF JURISDICTION.—COMMISSION TO EXAMINE UNDER 14 & 15 VICT. C. 99.

IN an action on a bill of exchange for the price of goods sold to the defendant, a master mariner trading between Liverpool and China, the defendant had obtained time to plead upon the usual terms, but was, after plea but before issue joined, compelled to proceed to China.

A motion was refused for the postponement of the trial until his return, upon affidavits of the dealings between the parties, and stating that the defendant's evidence was essential to make out his defence, and that, beyond the amount paid into Court, he had a good defence on the merits.

Quere, whether a commission could be granted before issue joined, for the defendant's examination in China, under the 14 & 15 Vict. c. 99, s. 2. *Solomon v. Howard*, 12 C. B. 463.

ENTERING JUDGMENT NUNC PRO TUNC.—DELAY BY PLAINTIFF.—ACT OF COURT.

On an action coming on for trial at the Spring Assizes, 1851, a verdict was taken for the plaintiff subject to an award, which was made on May 28 following, directing the verdict to be entered for the plaintiff. It appeared that the plaintiff, in consequence of her poverty, was unable to take up the award, but, having ascertained that the defendant had done so, obtained a copy on November 21, but in consequence of her death on the next day, her attorney only went on December 2 to sign judgment. The plaintiff's will was taken to Doctors' Commons on December 3, to be

proved, but in consequence of the defendant having entered a caveat, probate was not obtained until May 5, 1852.

A rule was discharged in the ensuing Trinity Term to enter up judgment as of Michaelmas Term, 1851.—*Cresswell, J.*, citing *Copley v. Day*, 4 Taunt. 703; *Lawrence v. Hodgson*, 1 Y. & J. 368, on the ground that judgment could not in any case be entered *nunc pro tunc*, unless the delay were attributable to the act of the Court. *Freeman v. Tranah*, 12 C. B. 406.

NEW TRIAL OF PENAL ACTION NOT GRANTED.

“It is perfectly well settled that a rule nisi for a new trial is never granted on the ground of the verdict being against evidence, in penal actions.¹ That rule of practice was established long ago, and there is no reason why we should now deviate from it,”—per *Parke, B.*; and per *Alderson, B.*,—“the rule depends upon the same principle as that which prevails in trials for felony and misdemeanour, where a verdict of not guilty has been returned. There are, no doubt, some cases in which the acquittal is against the evidence. But the reason for the rule is a good one. It is thought better that a few guilty persons should escape, than that the same matter should be tried over and over again.” *Hall v. Green*, 9 Exch. R. 247.

LAW OF COSTS.

OF PUISNE INCUMBRANCER DISCLAIMING IN FORECLOSURE SUIT.

IN a bill filed by the first mortgagees of certain freehold premises to foreclose the mortgage, against the mortgagor and the second mortgagees, the plaintiffs alleged, that they had applied to the mortgagor and to the second mortgagees, requesting them to pay the amount of debt and interest, but that they had refused so to do. The mortgagor had not appeared, and the plaintiffs entered an appearance for him, and filed a traversing note. The second mortgagees afterwards filed their joint answer and disclaimer, disclaiming all interest in the mortgaged premises, and alleging that no application had been made to them prior to the suit being instituted, and that if they had been applied to, they would have released and disclaimed all interest.

¹ See *Fonnereau v. —*, 3 Wils. 59; *Brook v. Middleton*, 10 East, 269.

On the suit being brought to a hearing, the second mortgagees asked for their costs. Vice-Chancellor *Stuart* said,—“These plaintiffs in the bill, made it a part of their case, by distinct averment, that they have applied to the defendants and requested them to pay to the plaintiffs the said sum of 1,200*l.* debt, interest, and costs, but that the defendants have refused so to do; and they have gone on to frame interrogatories, following up this charge. It is true that these are the ordinary words employed in a bill for a foreclosure, but they are words introduced for a very wise purpose, and not merely as a matter of form. At law, indeed, if a plaintiff issues a writ for a legal demand, he may recover both debt and costs, without averring that he has made any application to the defendant, because none is necessary in law. But an entirely different rule, I am glad to say, prevails in a Court of Equity. In this Court, the wisdom of pleaders, sanctioned by the custom of the Court, adopted such a charge, but not as a senseless and useless form. The old form went further, upon the ground that it was not sufficient to allege merely that the plaintiff had made an application to the defendant; because it is perfectly possible to make an application for the express purpose of inviting a refusal: the old form, therefore, went to the extent of averring that the plaintiff had frequently and in a friendly manner applied to the defendant, and that the defendant had refused, &c.

“This is a substantial allegation, introduced for the purpose of guiding the Court in disposing of the question of costs, which are in every case, within the discretion and under the control of the Court.” * * * * “My opinion is, that if a man is ready and willing to comply with every just demand that can be made upon him, it is of the essence of justice that he shall not, without previous application or request, which might give him an opportunity of submitting to the plaintiff’s demand, be dragged into a Chancery suit, without notice, and put to considerable expense without the commission of any fault on his part.

“It is said, the charge in the bill is, that the plaintiffs applied for payment of the mortgage-money, and that the defendants do not aver in their answer that they would have paid it. True; but they do aver this, that they would have disclaimed and released. They might have released, and so have made it unnecessary for the plaintiffs to bring them here;

and I think it was the duty of the plaintiffs to have inquired, whether the defendants were willing to submit to the demand or not, before filing their bill. I decide this case, therefore, on a principle which none of the authorities cited by Mr. Rasch seem to me to touch; those cases merely go to show the terms upon which the Court will deal with a disclaiming defendant, and do not turn at all upon averment or conduct. I shall make the order absolute upon the defendants’ answer, they undertaking to execute a release, and the plaintiffs undertaking to pay their costs.” *Gurney v. Jackson*, 1 Smale & Giffard, 97.

POINTS IN EQUITY PRACTICE.

SERVICE OF PROCESS AGAINST ABSCOND- ING DEFENDANT UNDER ORDER 31 OF MAY, 1845.

In a suit to wind up the affairs of a partnership between the plaintiff and the defendant, service of process could not be made on the latter. The plaintiff stated in his affidavit, that he believed the defendant had absconded with a view to escape the liabilities to which he was subject, and “to avoid service of any legal proceedings which might be issued against him.” An order was made under the 31st Order of May 8, 1845, that the defendant should appear within a time fixed, and to be inserted in the *London Gazette*. *Barton v. Whitcombe*, 16 Beav. 205.

LEAVE TO FILE COPY PETITION, WHERE ORIGINAL LOST.

The Vice-Chancellor *Stuart* gave leave to file the copy of the petition left for the use of the Court in lieu of the original petition, which had been lost. *Smith v. Harwood*, 1 Smale & Giffard, 137.

INNS OF COURT.

PUBLIC EXAMINATION. — TRINITY TERM, 1854.

THE Council of Legal Education have approved of the following Rules for the Public Examination of the Students.

The attention of the Students is requested to the following Rules of the Inns of Court:—

“As an inducement to Students to propose themselves for examination, Studentships shall be founded of Fifty Guineas per annum each, to continue for a period of three years, and one such Studentship shall be conferred on the most distinguished Student at each Public Examination; and further, the Examiners shall

select and certify the names of three other Students who shall have passed the next best Examinations; and the Inns of Court to which such Students belong, may, if desired, dispense with any Terms, not exceeding two, that may remain to be kept by such Students previously to their being called to the Bar. Provided that the Examiners shall not be obliged to confer or grant any Studentship or Certificate, unless they shall be of opinion that the Examination of the Students they select has been such as entitles them thereto."

"At every call to the Bar those Students who have passed a Public Examination, and either obtained a Studentship or a Certificate of Honour, shall take rank in seniority over all other Students who shall be called on the same day."

"No Student shall be eligible to be called to the Bar who shall not either have attended during one whole year the Lectures of two of the Readers, or have satisfactorily passed a Public Examination."

Rules for the Public Examination of Candidates for Honours, or Certificates entitling Students to be called to the Bar.

An Examination will be held in next Trinity Term, to which a Student of any of the Inns of Court, who is desirous of becoming a Candidate for a Studentship or Honours, or of obtaining a certificate of fitness for being called to the Bar, will be admissible.

Each Student proposing to submit himself for Examination, will be required to enter his name at the Treasurer's Office of the Inn of Court to which he belongs, on or before Monday, the 15th day of May next, and he will further be required to state in writing whether his object in offering himself for Examination is to compete for a Studentship or other honourable distinction; or whether he is merely desirous of obtaining a Certificate preliminary to a call to the Bar.

The Examination will commence on Monday, the 22nd day of May next, and will be continued on the Tuesday and Wednesday following. It will take place in the Benchers' Reading Room of Lincoln's Inn; and the doors will be closed Ten Minutes after the time appointed for the commencement of the Examination.

The Examination by printed Questions will be conducted in the following Order:—

Monday Morning, the 22nd May, at half-past Nine, on Constitutional Law and Legal History; in the Afternoon, at half-past One, on Equity.

Tuesday Morning, the 23rd May, at half-past Nine, on Common Law; in the Afternoon, at half-past One, on the Law of Real Property, &c.

Wednesday Morning, the 24th May, at half-past Nine, on Jurisprudence and the Civil Law; in the Afternoon, at half-past One, a paper will be given to the Students including Questions bearing upon all the foregoing subjects of examination.

The Oral Examination will be conducted in

the same order, during the same hours, and on the same subjects, as those already marked out for the Examination by printed Questions, except that on *Wednesday Afternoon* there will be no Oral Examination. The Oral Examination of each Student will be conducted apart from the other Students; and the character of that Examination will vary according as the Student is a Candidate for Honours or a Studentship, or desires simply to obtain a Certificate. The Oral Examination, and Printed Questions, will be founded on the Books below mentioned; regard being had, however, to the particular object with a view to which the Student presents himself for Examination.

In determining the question, whether a Student has passed the Examination in such a manner as to entitle him to be called to the Bar, the Examiners will principally have regard to the general knowledge of Law and Jurisprudence which he has displayed.

A Student may present himself at any number of Examinations, until he shall have obtained a Certificate. Any Student who shall obtain a Certificate may present himself a second time for Examination as a Candidate for the Studentship, but only at one of the three Examinations immediately succeeding that at which he shall have obtained such Certificate; provided, that if any Student so presenting himself shall not succeed in obtaining the Studentship, his name shall not appear in the list.

Students who have kept more than eleven Terms shall not be admitted to an Examination for the Studentship.

The Reader on Constitutional Law and Legal History will expect all Students to answer any general questions relating to the History of England, and to know the outlines of Constitutional Law.

The Candidates for distinction will be expected to know the progress of our Institutions and the changes of our Constitution. They will be examined on the History of the Conqueror and his immediate successors; on the reign of Henry the Second; on the circumstances which led to the signing of Magna Charta. They will be expected also to know thoroughly the History of Elizabeth, of Charles the First, and of William the Third; and to give an account of the more remarkable State Trials from the time of James the First to that of Queen Anne. The Books for the ordinary Examination will be Rapin and Hallam. Those for Candidates for distinction will be Hallam, Rapin, Burnet, Millar, Clarendon, May, the State Trials, and the Parliamentary History.

The Reader on Equity proposes to examine in the following books:—

1. Smith's Manual on Equity Jurisprudence; the first seven chapters of Story's Commentaries of Equity Jurisprudence, vol. 1; Wigram's Points in the Law of Discovery ("Introductory Observations" and "First

Proposition"); The Act for the Improvement of Equity Jurisdiction, 15 & 16 Vict. c. 86.

2. Mitford on Pleadings in the Court of Chancery; White and Tudor's Leading Cases (with the Notes), vols. 1 & 2.

Candidates for Certificates of Fitness to be called to the Bar will be expected to be well acquainted with the Books mentioned in the first of the above classes. Candidates for a Studentship or Honours will be examined in the Books mentioned in the two classes.

The *Reader on the Law of Real Property* proposes to examine in the following Books and Subjects:—

1. Williams—Real Property.
2. Learning of Powers—1 Sugd. Pow., chap. 1—4.
3. The Alienation of Freehold Estates by Tenants in Tail and Married Women, with reference to 3 & 4 Wm. 4, c. 74.
4. The Law of Perpetuity:—with reference to the Doctrine of Cy-Près, Powers of Sale and Exchange, and Powers of Appointment.
5. The Liability of Purchasers to see to the Application of their Purchase-money.
6. The Law of Settlement by Deed:—with reference to the Ante-Nuptial, Post-Nuptial, and Voluntary Settlements.

Candidates for a Studentship, or other Honorary distinction, will be examined in all the foregoing Books and Subjects. Candidates for a Certificate will be examined in 1, 2, and 3.

The *Reader on Jurisprudence and the Civil Law* proposes to examine in the following subjects:—

1. The Relation of Jurisprudence to Moral Philosophy. Austin, Province of Jurisprudence determined, Lect. v.; Whewell, Elements of Morality and Polity, Book iv. vol. 2. (Second edition.) The Student must be prepared to indicate the points of conflict between these writers.
2. The Roman Law of Servitudes, Prescriptions, Testaments, Legacies, and Fidei-Commissa. The modern Commentaries consulted may be, on the first two subjects, the *Doctrina Pandectarum* of Mühlenbruch; and, on the last three, the *Institutiones* or *Commentarii Juris Romani Privati* of Warnkönig.
3. The Roman Law of Civil Process at the era of Gaius. Gaius, Comment., lib. iv. The Modern Treatises referred to may be the *Innere Geschichte des Römischen Rechts* of Tigerström, pp. 86, *et seq.*; or J. G. Phillimore's Introduction to the Study of Roman Law, pp. 16, *et seq.*
4. The Conflict and Harmony of Laws on the subject of Marriage and Divorce. Story, Conflict of Laws, chap. 5, 6, 7.
5. National Rights of Self-preservation, Independence, and Equality. Wheaton Elements of International Law. Part i., chap. 1, 2, 3.

Candidates for distinction will be examined in all the foregoing subjects. Candidates for a Certificate will be examined in (4) and (5), and also in (2), so far as the subjects enumerated are treated of in the Institutes of Justinian.

The *Reader on Common Law* proposes to examine in the following Books and Subjects:—

1. The ordinary steps in an Action at Law.
2. The Parties to Contracts—Smith's Lectures on Contracts, viii—x. (omitting the note commencing at p. 253).
3. Offences against Property—Stephen Com. bk. vi., chap. 6.
4. The Law of Landlord and Tenant, so far as it relates to the Right to Distrain and the Obligation to Repair—Woodfall L. & T. 6th ed., bk. ii., chap. 2, ss. 1—3; chap. 4, ss. 1 and 2.
5. The following Leading Cases, with the Notes thereto (Smith's Lead. Cas. 3rd ed.), Semayne's Case—The Six Carpenters' Case—*Price v. Earl of Torrington*—*Higham v. Ridgway*.

Candidates for Certificates of fitness to be called to the Bar will be examined in the 1st, 2nd and 3rd of the above subjects. Candidates for the Studentship or for Honours will be expected to be conversant with all the above subjects.

By order of the Council.

RICHARD BETHELL, *Chairman*.

*Council Chamber, Lincoln's Inn,
9th March, 1854.*

COMMON LAW JURISDICTION OF THE COUNTY COURTS.

THE following questions have been issued by the County Court Commissioners,—which, it will be observed, show a strong disposition to extend the powers of the Judges:—

1. Would it be convenient that a plaintiff suing in a Superior Court in an action of tort, and recovering less than 20*l.*, should be deprived of costs, unless the Judge certifies that the case is fit to be tried in the Superior Court?

See sect. 129 of 9 & 10 Vict. c. 95, and sect. 11 of 13 & 14 Vict. s. 61.

2. Would it be convenient that a plaintiff suing in a Superior Court in an action of contract, and recovering less than 50*l.* should be deprived of costs?

See sect. 119 of 15 Vict. c. lxxvii. London City Small Debt Act.

3. Would it be convenient that the County Courts should have jurisdiction when the title to any corporeal or incorporeal hereditament comes in question?

4. Would it be convenient that the County Courts should have jurisdiction where the validity of a devise, bequest, or limitation under a will or settlement is in dispute?

5. Is it desirable to repeal sect. 128 of 9 & 10 Vict. c. 95?

6. What, in your opinion, is the cause of

parties not having more generally availed themselves of the jurisdiction by consent under sect. 17 of 13 & 14 Vict. c. 61?

7. Has the unlimited jurisdiction of the County Courts in replevin been found inconvenient, where the declaration required by sect. 121 of 9 & 10 Vict. c. 95, has not been made?

8. Has any inconvenience arisen from the present practice in interpleader, where goods are taken in execution?

See sect. 118, 9 & 10 Vict. c. 95.

9. Have you any suggestion to make for the purpose of improving the practice of interpleader in the County Courts?

10. Is the jurisdiction to give possession of small tenements, under sect. 122 of 9 & 10 Vict. c. 95, found to be convenient?

11. Would it be convenient to extend that jurisdiction to tenements of greater value, where the relation of landlord and tenant exists?

12. Would it be convenient that that jurisdiction should be extended to cases of forfeiture where the annual rent does not exceed 50*l.*?

13. Is it desirable to repeal so much of the provision contained in sect. 11 of 13 & 14 Vict. c. 61, as excepts judgments by default from the operation of the enacting part of the clause?

See *Glynne v. Roberts*, 9 Ex. R. 253.

SELECTIONS FROM CORRESPONDENCE.

SURREY ASSIZES.

In this age of law reform, I trust the removal of the Surrey Assizes from Guildford—the very *utmost bounds* of the county—will not be lost sight of. The inconvenience sustained by the population of London and Southwark, in travelling with their witnesses a distance of 30 miles, and the large amount of tavern bills, occasioning very heavy additional expense to suitors, is a grievance which should be abolished.

I believe it is alleged by Guildford, that the town by charter is to enjoy the benefit of an alternate assize; but a charter, as an Attorney-General (Lee, I think) once said, is only a bit of parchment with a little wax attached to it.

CIVIS.

ARCHITECTS' COMMISSION AND DUTIES.

A. employs B., an architect, residing in London, to superintend the erection of a house in Surrey, nearly 40 miles from London. A. considers that there was great negligence in the architect, and that the house was scamped by the contractor, and has requested his account,—particularising the days when the work had the benefit of his personal inspection, but he refuses any information on the matter.

Is such a request reasonable from an employer, and by what means can he compel a discovery of the attendances? E.T.A.

LATE DELIVERY OF PRINTED PARTICULARS OF SALE.

It is a very general complaint that in many cases printed particulars of sale of estates by auction are not forthcoming until almost the very eve of the day of sale.

It remains for solicitors to urge upon auctioneers the necessity of more despatch. Why might it not be a condition, that the particulars should be published 7 or 14 days before the sale? A SOLICITOR.

SCOTCH LAW OF MARRIAGE.

Referring to the letter of "Civis," in your Number of the 18th February, it is clear that the Scotch gentleman imposed upon the ignorance of his legitimate daughter. The Scotch law applicable to the case, I believe, is:—1. If the father married the mother of the bastard daughter, the latter would be legitimated from birth, but the legitimate daughter would not be bastardized. 2. With regard to the real property, after the bastard had been thus legitimated, both daughters would take equally in the succession. 3. The legitimate daughter might be deprived of the succession to the real property by the birth of a lawful son of her father, on his marriage either with the mother of the bastard or with any other woman. The birth of an heir may, perhaps, have been the evil really apprehended by the legitimate daughter in the case mentioned by "Civis."

E. H. C.

RIGHT OF FISHING.

A. is entitled to a freehold estate in the North of England, on the *east* side of a river abounding in salmon.

The estate on the west side of the river belongs to B., who has from time to time granted leases to A. of the right of fishing, so far as his moiety of the river or his interest extends.

For the better preservation of the fish, A. has erected weirs across the entire river, and seeks now to maintain them against B. and his present lessees.

Has he any right to do so? and is B. entitled to fish on both sides of the river or not?

CIVIS.

TAXING OFFICERS IN CHANCERY.

SIR,—The establishment of these offices some twelve years since was a step which I believe gave general satisfaction to the Profession at large; and the skill and ability of the gentlemen who have filled, and who now fill the important and responsible posts of taxing masters have not been impugned. The qualification for the office is the having practised for twelve years or upwards as a solicitor of the Court—the remuneration 2000*l.* per annum.

Until recently all the masters performed the duties of their respective offices in their own

persons, and, with one exception they continue to do so now. In this one instance, however, to which I refer, the principal part of the business is performed by the Master's clerk. The profession is loud in its complaints at such a proceeding, as being quite contrary to the spirit and intention of the framers of the Act under which the offices were established, who intended that the post of Taxing Master should be filled by men of superior education and station in society.

Questions are continually arising on the taxation of bills which require the exercise of a sound judgment and discretion. It is not a mere checking of how many folios this or that proceeding may run, or seeing that a proper voucher is produced for such and such fees paid to counsel. It is something more than this. The Taxing Master acts in a judicial capacity, and equitably adjusts the rights of the solicitor and client. If a certain qualification for the office has been imposed by the Legislature, pray let the Profession have the benefit resulting from the appointment of a gentleman possessing those qualifications, and let it not be turned over to the tender mercies of an underling.

FABER.

CONTRACT FOR CONVEYING PASSENGERS TO AUSTRALASIA.

Very many of our countrymen are at present emigrating, and not a few have been grievously imposed on by the insufficient supply of fresh provisions, &c., on the voyage,—notwithstanding the very liberal promises to the contrary. Indeed the vessel is hardly out of sight of land before the passengers are, in too many instances, put on salt beef, none of the tenderest. These observations, however, are not intended to apply to the Queen of the South and vessels of the like class, nor to Green's ships.

In order to protect our countrymen, I hope some of your readers will be able to furnish you for publication with the form of a contract, which should be printed in the usual way for use; and if so, I would strongly recommend emigrants only to engage their berths on such contracts receiving the signature of the captain or owner. It would be a great boon to emigrants, and tend to check the cupidity of too many owners of wretched vessels.

AMICUS.

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

[For the previous Lists, see pp. 106, 161, 238, 301, 343, 383. These Lists contain many names which have not yet appeared in the *London Gazette*.]

Allen, Joshua Jullian, 20, Bedford Row.
Andrew, John James, 5, White Hart Court, Lombard Street.

Barlow, Edmund, 26, Essex Street, Strand.
Bennett, John, 35, Ludgate Hill.
Blake, George, Carlton Chambers, 8, Regent Street.

Blake, James Joseph, 79, Blackfriars Road.
Braikenridge, Wm., 16, Bartlett's Buildings.
Burrows, Charles, 20, Lawrence Lane, City.
Cookney, James Thos., 5, Lamb's Conduit Place.

Curtis, John, Haberdashers' Hall, Gresham Street.

Dangerfield, John, 26, Craven St., Charing Cross.

Davidson, Madgwick Spicer, 18, Spring Gardens.

Desborough, Laurence, 6, Sise Lane.
Dyne, Wm. Wilkins, 61, Linc. Inn Fields.

Elcum, Hugh William, 13, Bedford Row.
Fesenmeyer, John Frederick William, 23, Bedford Row, and 10, Park Terrace, Highbury.

Flower, John Wickham, 17, Gracechurch Street.

Francis, Charles, 22, Austin Friars, City.
Galsworthy, William, 2, Charlotte Row, Mansion House.

Gosling, Frederick Solly, 1, Gray's Inn Sq.
Graham, Charles James, 3, Plowden Bldg., Middle Temple.

Gregory, Mark Henry, Wax Chandlers' Hall, Gresham Street, West.

Gregory, Thomas, 12, Clement's Inn.
Hall, Henry, 16, New Boswell Court.

Hartley, Jas., 23, Earl Street, Blackfriars.
Houghton, William, 4, Verulam Buildings.

Hughes, Walter, 17, Bucklersbury.
James, John, 13, Suffolk St., Pall Mall.

Jones, Chas. Gwillim, 11, Gray's Inn Sq.
Kearsey, Francis, 17, Bucklersbury.

Mortimer, Thomas, 4, Albany Court Yard.
Rogers, John, 40, Jermyn St., St. James.

Shaen, Samuel, Kennington Cross, Lambeth.
Smith, Charles Augustin, Croom's Hill, Greenwich.

Staniland, Samuel, 30, Bouverie Street.
Sweetland, John Park, 14, Queen's Square, Bloomsbury.

Talbot, Frederic, 47, Bedford Row.
Taylor, John, 7, Gray's Inn Square.

Ward, Henry, 51, Lincoln's Inn Fields.
Wathen, John Beardmore, 39, Guildford St.

White, John Thomas, 11, Bedford Row.
Williams, John Charles, 4, Whitehall.

Williams, John Howard, 16, Bedford Row.

PROFESSIONAL LISTS.

PERPETUAL COMMISSIONERS.

Appointed under the Fines and Recoveries' Act, with dates when gazetted.

Elgie, Frederick Thomas, Worcester, in and for the City of Worcester, also in and for the County of Worcester. Feb. 28.

Holmes, John Dickinson, Barnard Castle, in and for the County of Durham. March 7.

Newill, Robert Daniel, Wellington, Salop, in and for the County of Salop. Feb. 24.

Teale, Thomas Greenwood, Leeds, in and for

the West Riding of the County of York.
March 14.

**COUNTRY COMMISSIONERS TO ADMINISTER
OATHS IN CHANCERY.**

*Appointed under the 16 & 17 Vict. c. 78, with
dates when gazetted.*

Barlee, Edward Hobart, Bungay. March 14.
Batchelor, George, Newport, Monmouth,
March 3.

Berridge, Robt. Bristow, Leicester. Mar. 3.
Bradley, George, Castleford. March 3.
Branson, Chas. Anthony, Sheffield. Mar. 3.
Clark, Frederick, Snaith. March 21.
Corser, Geo. Sandford, Shrewsbury. March

14.
Cripps, William Charles, Tunbridge Wells.
Feb. 28.

Davies, Edward John Cox, Crickhowell.
March 3.

Dennett, Wm. Hugh, Worthing. March 21.
Evans, George Edward, St. Helier, Jersey
(for the Channel Islands). Feb. 21.

Forster, Thomas, Brompton. Feb. 28.
Gibson, Chas. Reginald, Dartford. Feb. 28.
Gardner, George Harrison, Windermere.
Feb. 24.

Marshall, William, Durham. Feb. 28.
Martin, Geo. Hughes, Chester. Feb. 21.
Moore, William Denis, Exeter. March 3.
Nash, Ambrose Evans, Bristol. March 21.
Pearson, Sydney, Dawlish. March 10.
Phillips, Chas. Thos., New Windsor. Feb. 24.
Ridley, John Jas., Birkenhead. March 7.

Stigant, Geo. Cornelius, Portsea. March 17.
Stuart, William, Wolverhampton. March 3.
Street, James, Manchester. March 3.
Swaine, William, Rochford. Feb. 21.
Thomas, William, Walsall. March 7.
Tiffen, Henry, Sudbury. Feb. 21.
Tozer Jno. Hellyer, Teignmouth. March 21.
Wade, John Henry, Pudsey. Feb. 24.
Ward, John, New Elvet, Durham. March 14.
Welford, Edward Davison, Newcastle-on-
Tyne. March 10.
Wilkinson, Charles, Kendal. March 17.
Wybergh, John, jun., Liverpool. March 7.

**DISSOLUTIONS OF PROFESSIONAL PART-
NERSHIPS.**

*From 21st Feb. to 21st March, 1854, both in-
clusive, with dates when gazetted.*

Burchell, William and John Parson, 47,
Parliament Street, Westminster, Attorneys and
Solicitors. Feb. 21.

Roberts, Henry Taylor and George Newby
Wardell, 7, St. Martin's Court, Leicester Sq.,
Attorneys and Solicitors. March 21.

Scott, John, formerly of 23, Southampton
Buildings, now of 15, St. Swithin's Lane,
City, and Lewis Frederick Edwards, 23,
Southampton Buildings, Attorneys and Solici-
tors. March 17.

Spencer, William and Edward Sargent, Bir-
mingham, Attorneys and Solicitors. Feb. 21.

Williams, Richard David and Hugh Jones,
Carnarvon, Attorneys and Solicitors. March 3.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

(*Coram Lord Chancellor and Lords Justices.*)

In re Incumbered Estates' Act. Feb. 11, 1854.

**ENROLMENT OF DECREE OF COMMISSION-
ERS ON NON-PAYMENT OF PURCHASE-
MONEY.—ATTACHMENT.**

*An application was granted under the 12 &
13 Vict. c. 77, s. 14, to enrol a decree of
the Commissioners under this Act, upon the
non-payment of the purchase-money of an
estate, in order to attach the party in this
country, under an attachment issued on such
default.*

This was an application under the 12 & 13
Vict. c. 77, s. 14, to enrol a decree of the Com-
missioners under this Act, upon the non-
payment of the purchase-money of an estate on
the day fixed, in order to attach the party in
this country under the attachment which had
issued upon such default.

C. W. Borrett in support, referred to the 41
Geo. 3, c. 90.

The Court granted the application.

Lords Justices.

Ex parte Bateman, in re Burbury. March 10,
1854.

PETITION FOR LEAVE TO APPEAL TO THE

**HOUSE OF LORDS.—BANKRUPT LAW CON-
SOLIDATION ACT, s. 18. — RE-TAXATION
OF SOLICITORS' BILLS OF COSTS.**

*A petition was refused, with costs, for leave
to appeal to the House of Lords from the
decision of this Court directing, on appeal
from a district Commissioner, the re-taxa-
tion of the bills of costs of the solicitors to
the assignees,—it not being a matter of
law or equity of sufficient difficulty or im-
portance within the 12 & 13 Vict. c. 106,
s. 18, to require the decision of the House
of Lords.*

THIS was a petition for leave to appeal from
the decision of their lordships (reported *ante*,
p. 33), directing a re-taxation of the bills of
costs of the solicitors to the assignees in this
bankruptcy on appeal from the district Court
of Birmingham.

Roll and Selwyn in support; W. M. James
and W. Morris, for the assignees, were not
called on.

The Lords Justices said, that as a rule the
Court was always unwilling to refuse leave to
appeal from its own judgment. Under the 12
& 13 Vict. c. 106, s. 18, an appeal might
be directed if it should be deemed that any
matter of law or equity brought by way of ap-
peal was of sufficient difficulty or importance

to require the decision of the House of Lords. In the present case, however, the simple question was, whether there should be a re-taxation, and did not therefore justify an appeal. The petition would be accordingly refused, with costs.

Stone v. Godfrey. March 6, 16, 1854.

PARENT AND CHILD.—TENANT BY THE CURTESY.—RELINQUISHMENT OF DOUBTFUL RIGHT.

The plaintiff had, acting on the advice of counsel, that he was not entitled as tenant by the curtesy, filed his bill as next friend of his daughter to establish her title to certain property, and had been appointed guardian by decree in 1830, and received the rents and profits for her maintenance: Held, dismissing with costs an appeal from Vice-Chancellor Stuart, that the arrangement could not now be disturbed.

THIS was an appeal from the decision of Vice-Chancellor Stuart (reported *ante*, p. 146). It appeared that the plaintiff's wife was entitled to the rents of certain property, but that in consequence of her title being denied she had not received any portion before her decease in 1824. The plaintiff, acting on the advice of the late Mr. Samuel Duckworth that he was not entitled as tenant by the curtesy, then filed his bill as next friend of his daughter, claiming the property, and a decree was made in 1830, by the late Master of the Rolls, establishing her title, and the plaintiff received the rents and profits in trust to apply the same for her maintenance. The defendant had married the daughter, and on the plaintiff refusing to deliver up possession, he had brought an action of ejectment, whereupon this bill was filed by the plaintiff for an injunction, and claiming to be entitled to the rents for life as tenant by the curtesy.

Lee and Fooks for the plaintiff; *Glasse and F. P. Morris* for the defendants, cited *Cholmondeley v. Clinton*, 2 Jac. & W. 191; 4 Bli. 1; *Stewart v. Stewart*, 6 C. & F. 911.

Cur. ad. vult.

The Lords Justices said, that as the plaintiff had been the next friend of his infant daughter in a suit in which the title alleged on her behalf, was wholly at variance with that which he now set up, and as he had also acted as trustee for her, and had got into possession in that capacity under a decree of the Court, he could not now be permitted to say that such possession was adverse. The appeal would therefore be dismissed with costs.

Maniere v. Leicester and another. March 16, 1854.

MOTION FOR DECREE, WHERE TRAVERSING NOTE FILED AGAINST ONE DEFENDANT AND ANOTHER ANSWERS.—RECORD AND WRIT CLERK'S CERTIFICATE.

Held, that the plaintiff is entitled to move

for a decree under the 15 & 16 Vict. c. 86, s. 15, in a suit where one of the defendants answers, and where against the other, who was abroad, he had filed a traversing note; and a direction was given to the Record and Writ Clerk to issue a certificate of such answer having been put in, and traversing note filed, in order to set down the motion for hearing.

THIS was an application by direction of Vice-Chancellor Wood for an order on the Clerk of Records and Writs to issue his certificate that one of the defendants had answered the bill in this suit, and that the plaintiff had filed a traversing note against the other defendant who had gone abroad. The plaintiff intended to move for a decree under the 15 & 16 Vict. c. 86, s. 15, and required the certificate in order to enter the motion with the Registrar, but a doubt was raised whether the filing of the traversing note did not preclude the motion being made.

Prendergast in support referred to the 57th order of May 8, 1845, which directs that "a traversing being filed, and a copy thereof duly served, is to have the same effect as if the defendant had filed a full answer or further answer, traversing the whole bill, or such parts of the bill as the note relates to, on the day on which the note was filed."

The Lords Justices made the order as asked.

Master of the Rolls.

Ramsden v. Garden. March 16, 1854.

SPECIAL EXAMINER.—DELAY IN OBTAINING APPOINTMENT BEFORE EXAMINER.—EXAMINATION IN OPEN COURT.

An application was refused (upon the parties not agreeing as to terms) for the appointment of a special examiner in order to avoid the delay consequent on an appointment not being obtainable from the examiner for "upwards of a month; but the Court intimated the examination would be taken in open Court.

THIS was an application for the appointment of a special examiner in this suit, on the ground that an appointment before the examiner could not, in consequence of the state of business before him, be obtained before April 24 next, and in order to avoid such unnecessary delay.

Rogers in support; *R. Palmer*, contra.

The Master of the Rolls said, that if the parties could not agree to the terms, the special examiner would not be appointed, and that he would take the examination in open Court.

Mayor, &c., of Faversham v. Ryder. March 20, 1854.

REQUEST TO CORPORATION FOR BENEFIT AND ORNAMENT OF TOWN.—STATUTE OF MORTMAIN.

A testatrix gave a sum of money after the termination of certain life estates to the

corporation of a town, to be "applied in such manner and for such purposes as the said corporation shall judge to be most for the benefit and ornament of the said town." Held, that the gift was not void under the Statute of Mortmain, as contemplating the necessary purchase of land; and a reference was directed to Chambers to settle a scheme with the assistance of the Attorney-General,—the costs of all parties, as between solicitor and client, to come out of the estate.

A TESTATOR, by his will, directed, that the interest on a sum of 1,000*l.* 4 per cent. Bank Annuities be paid to his three daughters for life, and after the death of the survivor to be transferred to the plaintiffs, to be "applied in such manner and for such purposes as the said corporation shall judge to be most for the benefit and ornament of the said town."

R. Palmer and W. Hislop Clarke, for the corporation, now claimed a transfer of the fund, with arrears of interest from November, 1834, when the surviving daughter died.

Lloyd and Grove for the defendant, the executor of the surviving trustee, *contra*, on the ground that the gift must necessarily include the purchase of land, and was therefore void under the Statute of Mortmain.

The Master of the Rolls said, that the gift was valid, as the direction did not necessarily tend to bring lands into mortmain. A reference was therefore made to Chambers to settle a scheme with the assistance of the Attorney-General,—the costs of all parties, as between solicitor and client, to come out of the fund.

Vice-Chancellor Kindersley.

Palmer v. Simmonds. March 7, 1854.

WILL. — CONSTRUCTION. — PRECATORY TRUST.—ABSOLUTE BEQUEST.

A testatrix, by her will, gave the residue of her personal estate and effects to *ii.*, "his heirs, executors, administrators, and assigns for ever, for his own use and benefit, as I have full confidence in him, that if he should die without lawful issue he will, after providing for his widow during her life, leave the bulk of my said residuary estate" to four parties therein named, equally: Held, on special case, that *ii.*, who survived his wife, took absolutely, and that no precatory trust was created.

THE testatrix, by her will, gave and devised the residue of her personal estate and effects after payment of her debts, funeral and testamentary expenses, and legacies, and all her real estate (if any) to "Thomas Harrison, his heirs, executors, administrators, and assigns for ever, for his own use and benefit, as I have full confidence in him, that if he should die without lawful issue he will, after providing for his widow during her life, leave the bulk of my said residuary estate" unto the four parties therein named equally. It appeared that

Thomas Harrison survived his wife, and by his will devised all his real and personal estate in trust for sale and conversion, and out of the proceeds to pay debts and legacies, and then gave the residue equally between the children of his wife's sister and the four parties named in the above will. This was a special case on the point whether the trust to Thomas Harrison was precatory or not.

Campbell and Law for the trustees of his will; Teed, Pownall, and Rendall for the four parties entitled under the previous will; Baily and Ellis for the children of Mrs. Harrison's sister.

The Vice-Chancellor said, that the will did not create a precatory trust, and that Mr. Harrison took absolutely.

Neve v. Hodges. March 8, 1854.

FORECLOSURE SUIT. — PRIORITY OF CREDITORS OBTAINING JUDGMENTS AFTER EQUITABLE MORTGAGE AND BEFORE TRANSFER THEREOF.

The plaintiff had advanced funds to the defendant to meet payments to S., who had lent him money on two promissory notes, with a deposit of title-deeds until payment, and the defendant appointed in the plaintiff's favour by deed, in which S. joined and demised and released all his interest. In a foreclosure suit, held, that the creditors who had obtained judgments in the period between the deposit of the deeds to S. and the appointment to the plaintiff, were not entitled in priority, and a decree to foreclose was made, and one day named for all the creditors.

THE defendant, in this foreclosure suit, had given two promissory notes to a Mr. Stokes, with interest at 5 per cent., and a deposit of title-deeds until repayment of both sums which had been advanced to him. It appeared that on a large amount of interest being in arrear, and the sums remaining unpaid, Mr. Stokes required payment, and that the defendant not being prepared with the necessary funds, the plaintiff had advanced the money required, taking as a security a deed of appointment, with a proviso for redemption, by the defendant to the plaintiff's use of the property comprised in the title-deeds deposited, and Mr. Stokes, who was a party thereto, demised and released all his interest.

Baily and G. Simpson for the plaintiff; Metcalfe, Speed, and H. Stevens for creditors who had obtained judgments in the period between the deposit of the deed to Mr. Stokes and the deed of appointment in the plaintiff's favour, *contra*.

The Vice-Chancellor said, that the plaintiff was in the same position as Mr. Stokes, and was therefore entitled to foreclose,—one day to be fixed for all the judgment creditors, according to the present practice.

Ivens v. Elwes. March 16, 1854.

CREDITORS' DEED. — COVENANT NOT TO

SUE.—STATUTE OF LIMITATIONS.—SPECIALTY AND SIMPLE CONTRACT DEBTS.

Under a deed in trust for creditors, some of whom were specialty and others simple contract, it was covenanted that they should not sue, prosecute, &c., the debtor or his estate, in consideration of certain terms as to the payment of their debts: Held, that the deed prevented the operation of the Statute of Limitations.

Quere, whether the simple contract debts were thereby converted into specialty.

It appeared that by an indenture in October, 1831, it was covenanted that certain specialty and simple contract creditors of Admiral Rye and his son should not sue, arrest, prosecute, &c., the said Admiral Rye or his estate or effects, for the considerations therein mentioned as to the payment of their debts. It appeared that Admiral Rye had with his daughter, the sole surviving child, and husband of the defendant, conveyed in December, 1842, the property, according to the trusts of a settlement of even date, and by his will he confirmed the deeds. This bill was filed in 1852 by the creditors, to set aside the deed of December, 1842, as void, and the question now arose whether the deed of October, 1831, converted the simple contract debts into specialty, and whether it operated so as to prevent the specialty debts being barred by reason of the lapse of more than 20 years,

Swanston and Bazalgette for the plaintiffs; *Baily, Glasse, G. Lake Russell, and Lonsdale*, for the defendants.

The Vice-Chancellor said, that the deeds of December, 1842, were void against creditors. The Statute of Limitations did not begin to run until the deed of 1839 should cease to operate, and that therefore the specialty debts were not barred. With respect to the question, whether the simple contract debts were converted into specialty by the deed, no opinion would be expressed, as inquiries must be taken under the usual administration decree which would be made.

Vice-Chancellor Stuart.

Cradock v. Owen. March 8, 1854.

ADMINISTRATION CLAIM.—EXECUTOR TAKING PERSONALTY BENEFICIALLY WHERE LEGATEES.—ORDER ON FURTHER DIRECTIONS.—RIGHT OF CROWN WHERE NO HEIR OR NEXT OF KIN.

Held, in an administration claim, that where executors take a legacy under a will and in respect of their office, they are excluded from all claim to take beneficially the personal estate, upon there being no next of kin to their testatrix.

The testatrix had directed the sale and conversion of her real estate, and the payment of her debts and legacies out of the proceeds: Held, that the legacies were apportionable between the real and personal estates.

By an order on further directions, payment was directed out of the personally, and the Chief Clerk certified such payment and allowance out of that fund: Held, that as the Attorney-General was not then before the Court, he was not bound by such order.

THE testatrix, by her will, whereby she appointed the plaintiff and defendant her executors, directed the payment of 19 guineas to a charity therein mentioned out of her personally, and she then gave all her real and personal estate to her executors upon the ordinary trusts to sell and convert into money. The testatrix then directed each of them to retain a sum of 50*l.* out of the produce of the real and personal estate for their trouble in the execution of the trusts of her will, and then gave several legacies out of the residue of the produce of her real and personal estate. It appeared that on the testatrix's death, the executors effected a sale and conversion into money, and that after the payment of the several legacies, a surplus remained in their hands. This claim was thereupon filed for an administration, and the usual inquiries were directed to ascertain the heir-at-law or next of kin, and for payment of the legacies out of the personally, and the proceeds of the real and of the personal estate were paid into Court and carried to separate accounts. The Chief Clerk had certified that there was no heir-at-law or next of kin, and on further directions the usual order was made to take the accounts, and for inquiries as to the debts, &c., to be taken in the presence of the Attorney-General. The Chief Clerk now certified that all the legacies, &c., had been paid out of the personal estate.

Selwyn and Cox, for the executors, claimed the personally beneficially.

Wickens for the Attorney-General, contra.

The Vice-Chancellor said, that as the executors took a legacy for their own benefit and in respect of their office under the will, they were excluded from all claim to take beneficially the personal estate: *Middleton v. Spicer*, 1 Bro. C. C. 201; and that as there were no next of kin it went to the Crown. Then, as to the apportionment of the legacies between the real and personal estate, it appeared from the will that the testatrix had directed a conversion so as to form one mixed fund, out of which the legacies were to be paid, and they must therefore be apportioned. As to the objection that the Attorney-General was precluded by the order on further directions directing the payment out of the personally, and by the Chief Clerk's certificate of their payment and allowance out of that fund, the Attorney-General was not then before the Court, and could not be bound by the order on further directions, and the objection must be overruled.

Pattison v. Graham. March 16, 1854.

BANKRUPT EXECUTOR.—CLAIM OF ASSIGNEES AGAINST SOLE ACTING EXECUTOR.—COSTS OF SUIT CONSEQUENT THEREON.

The assignees of a bankrupt, who was entitled

to a moiety in certain real and personal estates, had refused to complete a contract for the sale of certain of the property, claiming the division between themselves and the plaintiff, who was entitled to the other moiety, and had acted since the bankruptcy solely as executrix, of the proceeds of sale after deducting an incumbrance. The plaintiff thereupon was obliged to file a bill for an account of the estate and to complete the purchase, and on a reference the Chief Clerk certified nothing was due to the assignees: Held, that they were liable to the costs of all parties to the suit.

It appeared that the testator gave all his real and personal property equally between his daughter (the plaintiff) and her brother, and also appointed them executrix and executor. They acted in the executorship, but on the bankruptcy of her brother, in 1847, the plaintiff had acted alone. Certain real property was afterwards put up for sale by auction by the plaintiff, with the concurrence of his assignees, and a purchaser contracted for the same, but the assignees refused to complete, except upon receiving half of the proceeds, after payment of an incumbrance. The plaintiff refused to consent to this, on the ground that the bankrupt had already received more than his moiety of the property realised, but offered a payment of 110*l.* in full of all demands, and on the assignees demanding a much larger sum together with costs, this bill was filed for an account of the estate and to complete the purchase. The Chief Clerk having certified that the assignees had no claim against the plaintiff in respect of her brother's share, the matter now came on upon the question of costs.

Malins and Buck for the plaintiff; *Nichols* for an incumbrancer in the same interest; *Bacon and Eddis* for the assignees; *Bazalgette, Faber, and Sheffield* for other parties.

The Vice-Chancellor said, that as the litigation had been caused by the assignees, who had failed in substantiating their claim, they were liable to the costs of the plaintiff and of the other defendants, which would have to be paid by the plaintiff in the first instance, and recovered from the assignees, together with her own costs.

Tomkins v. Lane. March 20, 1854.

PETITION FOR PAYMENT OF MONEYS CARRIED TO SEPARATE ACCOUNT OF CONVICTS.

On petition on behalf of the relations, an order was made for the payment of two sums of money, transferred to the separate account of two persons found guilty of felony and transported, to such person or persons as the Queen might direct by Sign Manual.

THIS was a petition on behalf of the relations for the payment of a small sum, which had been carried to the separate account of two

persons found guilty of felony and transported, to the Solicitor of the Treasury.

Waley in support.

The Vice-Chancellor (on the suggestion of *Wickens* for the Crown) made an order for the payment to such person or persons as her Majesty should direct by Sign Manual.

Vice-Chancellor Wood.

Band v. Randle. March 15, 1854.

EQUITY JURISDICTION IMPROVEMENT ACT.

— LEAVE TO PROCEED WITHOUT PERSONAL REPRESENTATIVE TO TRUSTEE DYING INSOLVENT UNDER S. 44.

In a suit against two trustees for an account, and charging a breach of trust, one of the trustees died insolvent, and an application to his relatives as to taking out administration was not complied with: An order was made under the 15 & 16 Vict. c. 86, s. 44, for leave to proceed without a personal representative of such trustee's estate.

THIS was a motion under the 15 & 16 Vict. c. 86, s. 44, on behalf of infant plaintiffs, for leave to proceed with this suit, which was instituted for an account against two trustees charged with a breach of trust, without the personal representative of the estate of one of them who had recently died insolvent.

Kinglelake in support; *Locell* for the surviving trustee, contra; *Shapter* for the widow of the deceased trustee and who was interested.

The Vice-Chancellor, said it was distinctly alleged that the estate of the deceased trustee was insolvent, and it was also sworn that no satisfactory answer had been given by the relatives to the inquiries which had been made as to their intention to administer to his estate. An order would, therefore, be made for leave to proceed without a personal representative.

Harris v. Watkins. March 21, 1854.

CREDITOR'S SUIT.—MARSHALLING ASSETS.

— ESTATE SPECIFICALLY DEVISED.

A testator by his will appointed his wife executrix, and directed her to pay his debts, &c., and he gave her the rest and residue of his real and personal estate, absolutely. He also devised a freehold and copyhold estate to his niece absolutely, and also a leasehold estate to her upon the death of his wife: Held, in a creditor's suit that the estates specifically devised to the niece were not primarily liable nor liable to contribute *pari passu* to the debts, &c.

THIS was a creditor's suit for the administration of the estate of a testator, who by his will (appointing his wife his executrix) directed her to pay his debts, funeral, and testamentary expenses, and then devised a freehold and copyhold estate to his niece absolutely, and a leasehold estate to his wife for life, with remainder on her death to his niece, and he also gave the rest and residue of his real and personal estate to his wife absolutely. The wife

died shortly after the testator. A question arose as to the marshalling of the assets.

Rolt and Cottrell for the plaintiffs; *W. M. James* and *Whitbread* for the heir-at-law; *Willcock* and *Keene* for the customary heir; *Daniel, Hardy, and Shebbeare* for other defendants.

The Vice-Chancellor said, that the testator had given the rest and residue of his real and personal estate to his executrix absolutely, and directed her to pay his debts. There was nothing to show any intention on the part of the testator to exempt the residuary estate, and that therefore those specifically devised to his niece were not primarily liable nor liable to contribute *pari passu*.

Court of Queen's Bench.

Turney v. Dodwell. Jan. 15, 16, 27, 1854.

STATUTE OF LIMITATIONS.—OPERATION OF ACCEPTANCE OF BILL OF EXCHANGE IN PART PAYMENT.—SUBSEQUENT DISHONOUR.

It appeared that the plaintiff had obtained from the defendant his acceptance of a bill of exchange in part payment of a promissory note, but that such bill was afterwards dishonoured: Held, that such non-payment did not defeat its operation as a payment to prevent the debt on the promissory note being barred by the 9 Geo. 4, c. 14, s. 1.

THIS was a rule nisi obtained on Nov. 3 last, on leave reserved, to set aside the verdict for the plaintiff and enter it for the defendant in this action, which was brought on a promissory note dated in 1843, and on a bill of exchange dated in 1847. It appeared on the trial before *Jervis, C. J.*, that the note was given as security for a loan, and that the bill was given as a payment on account of such note upon the plaintiff applying for the defendant's acceptance. The bill was, however, dishonoured, and the learned Judge directed the jury that the bill, if paid on account of the note, would prevent the operation of the Statute of Limitations,¹ which had been pleaded.

Power and *Wroth* showed cause against the rule, which was supported by *O'Malley*.

Cur. ad. vult.

The Court said, that as the acceptance of the

¹ 9 Geo. 4, c. 14, s. 1, which enacts, that "in actions of debt, or upon the case founded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation" of the 21 Jac. 1, c. 16, "or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby:" "provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever."

bill was given as a part payment of the note, the fact of such payment afterwards proving worthless did not render its operation liable to be defeated, but was a payment within the Statute, and the rule must therefore be discharged.

Court of Common Pleas.

In re Elliott. Jan. 30, 1854.

FINES' AND RECOVERIES ACT.—DISPENSING WITH SIGNATURE OF HUSBAND TO CONVEYANCE BY MARRIED WOMAN.

A motion was granted under the 3 & 4 Wm. 4, c. 74, s. 91, to dispense with the signature and concurrence of the husband of a married woman of property to which she was entitled under her father's will, where it appeared the husband had not been heard of since 1837, and had only lived a few months with the applicant.

THIS was a motion under the 3 & 4 Wm. 4, c. 74, s. 91, for leave to dispense with the signature and concurrence of the husband of a married woman to a conveyance of certain property to which she was entitled under the will of her father. It appeared that her husband had not been heard of since 1837, and had only lived with her a few months after their marriage.

Byles, S. L., in support.

The Court granted the application.

Court of Criminal Appeal.

Regina v. Walker. Jan. 28, 1854.

INDICTMENT FOR LARCENY.—EVIDENCE FOR JURY.

On the trial of a prisoner indicted for stealing brass, it appeared he was employed by the prosecutor in his foundry, and that the brass was kept in a shop in which the prisoner had frequently been to borrow tools. The prisoner's brother-in-law had offered the brass for sale, and had stated he received it from the prisoner's wife, who received it from the prisoner: Held, quashing the conviction on a case reserved, that there was no evidence for the jury.

THIS was an indictment for larceny against the prisoner, who had been employed by the prosecutor at his foundry, for stealing a quantity of brass. It appeared on the trial at the Yorkshire East Riding Sessions, that the brass was kept in a shop to which the workmen had access, and that the prisoner, although employed in another part of the premises, had frequently been in the shop to borrow tools. The prisoner's brother-in-law had offered the brass for sale, and had stated he had received it from the prisoner's wife, who received it from the prisoner. The jury having found the prisoner guilty, this case was reserved on the ground there was no evidence for the jury of the prisoner having stolen the brass.

Dearly for the prisoner.

The Court said the conviction must be quashed.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 1, 1854.

JOINT-STOCK TRUST COMPANIES.

PROGRESS OF THE SOUTH SEA BILL.

THE South Sea Company's Bill for winding up their stock affairs but continuing the company for the purpose of administering private trusts, will in all probability pass the House of Commons. We subjoin a full report of the debate on Monday last, the 27th March, on the consideration of the Bill as amended in Committee, and it will be observed, that Mr. Spencer Pollett very ably stated the objections to the principle of the Bill, so far as it related to the establishment of a public company for administering private trusts. Mr. Pollett's argument was not sufficiently understood by the House, which was remarkably full,—the members having assembled to hear the Queen's Message on the commencement of the war with Russia. The numerous conversations going forward among the members, unfortunately prevented due attention to a question which was not unreasonably deemed of inferior importance to that which concerned the whole empire.

It appears that Mr. *Greene*, who had charge of the Bill, deemed it so much a matter of course, that in lieu of offering any explanation in support of the Bill, he merely "moved his hat" on the case being called on. Yet he could not but be aware that Mr. Mullings had given notice of important amendments affecting materially the principle of the Bill.

With all due submission, therefore, to our honourable representatives, the reasons against the novel trust clauses in the South Sea Bill not having been sufficiently heard or considered, it will evidently be competent for those who are opposed to the measure to renew the objections in the House of Lords,—where, indeed, a question relating

to the alteration of the law may be considered with more leisure, and discussed before a fitter tribunal. There the subject will have the advantage of being considered by the Law Lords as well as the other members of the Upper House, who are peculiarly interested in the stability of our laws, and accustomed to weigh and consider any important projects of alteration.

As an illustration of the lamentably imperfect state of our system of legislation, the progress of this Joint-Stock Bill, as a private Bill, is a remarkable instance. Many years ago, when Mr. Jeremy Bentham exerted his influence, a Bill was annually brought in to repeal the Laws against Usury, and in the shape and form of a public Bill, attracting due attention, and printed and circulated amongst all the members of Parliament and easily obtainable;—notice after notice given of its several stages;—it was strenuously opposed and often rejected. But at length, in one of the Bills for renewing the Bank Charter, a clause was introduced repealing, for a limited period, the restriction of interest to 5 per cent. on loans of money, or the discount of bills of exchange, promissory notes, &c., provided such loans were not secured on real property.

The present is an equally objectionable mode of altering the existing law. Here is a company, in the very commencement of its operations, inviting wholesale *breaches of trust*, enabling trustees who have personally accepted trusts to transfer the property and the interests, and perhaps the welfare of the widows and children of their deceased friends, to a public board, proverbially in their collective capacity without the ordinary feelings of family trustees, and whose moral responsibility being divided amongst many, is slightly felt by any of them. It is unnecessary to repeat here the

various objections to such undertakings, as they have already been laid before our readers, and are forcibly urged in the debate to which we refer. No necessity has been shown for altering the Law; and if the South Sea Directors are to be paid, why not all other trustees?

To our readers it can scarcely be necessary to offer any remark on the ignorant and vulgar prejudice displayed by Mr. Bouverie, who said, that "the fact of the Bill being opposed by the attorneys was the strongest argument in its favour;" nor need we observe on the wisdom of a legislator who classes *taxes* and *attorneys* as the great evils of the country! Probably the honourable gentleman may mean that the government of a country ought to be carried on without expense, and that Ministers of State, officers of the Army and Navy, the Judges and all connected with the administration of Justice, should discharge their duties gratuitously! We cannot complain that attorneys are placed on the same footing of necessity as the officers of State, and that as the unavoidable evil of taxes must continue, so will the advice and services of attorneys, so long as some men are vicious or fraudulent, and others are weak, foolish, imprudent, or ignorant. Whether the fee should be 6*s.* 8*d.* or 13*s.* 4*d.*, may be settled by the Taxing Master, who is not in the habit of allowing even the smaller sum for services which Mr. Bouverie may rate as of no value. The sapient remark, however, was perhaps not meant seriously, for we have no doubt the solicitor of the honourable member possesses, and is entitled to, his entire confidence. But thus it is—whilst every man of any importance knows men in the Profession of undoubted integrity, and whom he respects for their zeal and ability, he condemns the solicitor of his opponents for thwarting his views or defeating his objects. It would not be difficult to show, in opposition to Mr. Bouverie, that so far from attorneys being opposed to measures which are beneficial to the public, they have originated many useful improvements in the law, and have assisted in carrying forward and extending many proposals introduced by others. If they followed the advice of an old and very shrewd practitioner now no more, and sought only their own selfish interests, they would leave the amateur Law Reformers to pursue their own course, unopposed and uncorrected,—resting satisfied that all new legislation will produce business for the lawyer, and that although some of his emo-

luments may be curtailed in one department they will be increased in another. Mr. *Malins* well supported the amendments proposed, and defended the attorneys from the attack made upon them.

If the Bill should not be successfully opposed in the House of Lords, we may expect that not only the Executor and Trustee Bill already before the House of Commons, but other similar Bills will follow. Indeed the objection founded on the danger of a single company managing a large proportion of the trust estates and funds, and possessing an influence which may be unconstitutional, will be diminished if such companies become numerous, for it may be expected that their interests will be conflicting, and consequently the danger diminished.

It must be anticipated that active, intelligent and influential men in both branches of the Profession will follow the example thus set before them, and we shall soon probably have as many Trust Companies as Insurance Companies. Standing counsel and attorneys who can associate with themselves a respectable Board of Directors, will no doubt enter the field with our respectable brethren in Threadneedle Street and Bedford Row, and chairmen and deputies will soon be found to undertake the duties "for a consideration," which have hitherto been performed gratuitously by private trustees. The intended monopoly will thus be destroyed, and after all, it remains to be seen whether the parties about to enter into marriage settlements, or testators about to make their wills, can be induced to confide their affairs to a body of unknown directors.¹ We incline to think that though there might possibly be employment to a limited extent for one company, and in a peculiar class of cases, there cannot be room for several companies, so as to make it worth while to the shareholders to lock up a large guarantee fund on which but small interest will be received, for we must not forget that the first persons to be remunerated are the directors of the company, their chairman and deputy, their solicitor, secretary, surveyor, engineer, clerks and agents, with all the expenses of an office of business. When all these are paid, what dividend can the ordinary shareholders expect to receive, if the trust be economically conducted?

¹ Settlements and wills are prepared by attorneys. How many of them will advise their clients to appoint a Joint Stock Company as their trustees?

DEBATE ON THE SOUTH SEA COMPANY'S BILL.

ON Monday, the 27th March, the South Sea Company's Bill stood for consideration in the House of Commons, when the following debate took place:—

Mr. *Spencer Follett* said, — Sir, this Bill is intended to give rise to a new speculation. It is a private Bill introduced by a public company, and it has two objects:—First of all it is intended to wind up the affairs of the old South Sea Company, and then it is proposed to create a new South Sea Company,—a new joint-stock company for carrying on private trade; and in connexion with this latter object, it is proposed to give the company power to become trustees for executing private trusts. Now it is with regard to that specific trust question that I wish to bring the Bill under the consideration of the House. Well then, this part of the Bill provides,—first, that the company shall act as trustees; secondly, that the trust funds shall be kept separate and distinct from the other funds of the company; and thirdly, the directors for the time being, who are to be remunerated out of the trust, are yet to have no personal liability whatever in connexion with the trust. Now the effect of this part of the Bill would be to set aside a fundamental principle of law which has been recognised in this country for the last three hundred years; for it proposes that there shall be a personal remuneration to the gentlemen who for the time being shall constitute this new joint-stock company; while, secondly, it empowers them to deal with the deposited trust property as they shall think fit, and that, too, with only a limited liability. Now, this provision of limiting the liability of trustees is of the most objectionable nature. Whether the law in that respect be right or wrong I am not here now to discuss, but unquestionably it has been the law of this land for the last three hundred years that there should be an unlimited liability in such matters as this. If it is the opinion of Parliament that this law ought to be altered, it should be done by a public measure, and not through a private bill, the real object of which is to create a new monopoly in favour of a few individuals belonging to the South Sea Company. The effect of this Bill, if it passes, will, in my opinion, be most detrimental to the public interest; for, under the trust provisions of the Bill, the gentlemen who shall for the time being form the company will have the power of dealing as they think proper with a vast amount of property, both landed property and money property, to an extent in fact that is almost incalculable. Now, the effect of such a power as that will be very prejudicial to the public interest, as you may readily suppose. Here you are going to entrust in the hands of a board of directors, which may consist of 12 or 24 individuals, the right of dealing as trustees with all kinds of

valuable property. Consider what influence they will have in managing or superintending the sales of large landed estates. We hear constantly of the influence exercised by the real owners of landed estates upon our political system, and yet you are now asked to place in the hands of an irresponsible body of trustees the right of using similar influence without any check or control whatever. A great amount of money may be handed over to the care of these individuals to dispose of as they like—many, very many millions may come into their hands under this Bill, which will give them an opportunity of speculating in the funds, and from time to time altering the value and position of the public securities. In a word, the Bill will give them a monopoly of power which may be used in a manner that will be exceedingly prejudicial to the interest of the State, or the parties for whom they act as trustees. Again, we hear constantly and particularly from the President of the Board of Trade, of the objection there is to creating bodies with limited liabilities. Why, here you are going to create such a body without any responsibility whatever, who will have to deal with millions of money, and to carry on business speculations of all sorts. I may be told that the parties who intrust their property to the care of this company will have the security of a guarantee fund, but I maintain, sir, that the guarantee proposed by this Bill is entirely illusory and exceptional: honourable gentlemen will find that the whole property of this company is already disposed of. But I object to limiting the responsibility of the company to 300,000*l.* in the manner proposed, because that sum will be still liable to the debts of the company. It is no guarantee for the due performance of a trust, without at the same time every shareholder in the company being held individually responsible also. But again, I say, if any alteration in the law of liability is required, it should be made by a public Bill, for the benefit of the whole public, and not by a Bill of a purely private nature, introduced for the purpose of creating a monopoly for the benefit of a few individuals. Sir, I think I have said quite enough to convince the House that this Bill is most objectionable in its nature; and I repeat, that it will be quite time enough to alter the law when the subject comes formally and properly before the House; but, in the meanwhile, I must decidedly object to making any exceptional case, even in favour of the South Sea Company; and, therefore, sir, I shall propose to omit from this Bill all those clauses which will enable the company to become trustees, or in any way constitute the company into a trust company.

The *Speaker*.—The honourable member's motion is, that certain words be omitted from the preamble?

Mr. *S. Follett*.—It is, sir.

The motion having been seconded:

Mr. *Greene*.—I may observe at once, that this is what is called a limited liability Bill, and although there may be a good objection to

that principle, as a general rule, I doubt whether any has been urged in this case, with a chance of success; because the House cannot possibly have heard a single syllable which the honourable member has said on the subject. I, however, listened with a considerable degree of attention to what he said, but I would ask the House, whether, in point of fact, this is really the proper mode, or the proper time, for discussing so important a question as that? This Bill has been allowed to proceed up to the present stage, without a single step being taken, in order to express any degree of opposition to the Bill; but the Bill, as it is now brought in, is no new measure. The measure was before Parliament last year, and therefore no party can complain of not having had due notice of the nature or object of the Bill. Well, then, in that state of things the bill has passed through several stages up to the present time, when, it being merely proposed to take it into further consideration, I simply proceeded according to the ordinary practice to move my hat, thereby expressing my full conviction that the Bill would now pass as a matter of form; more especially as it had already passed under the surveillance of my honourable friend the Chairman of Committees. After all this watching and all these proceedings, I confess I had not the least idea that any opposition was to be taken at this stage of the Bill, which I have postponed up to this moment, under the idea that some trifling alteration was to be proposed in its provisions. The alteration now proposed, however, in point of fact, cuts at the pith and marrow of the whole Bill. What is the Bill, after all has been said and done? Why, it is a Bill that will greatly benefit the Public, and the only interest that can be at all affected by it is the interest of the attorneys. It simply, sir, proposes that the company shall be enabled to act as trustees, at the will or special desire of any party who may wish to create a trust, or with the consent of the *cestui que trust*, or in case the *cestui que trust* shall be under any disability, then, with the approbation of the Court of Chancery. With the consent of all the parties concerned, the company are to become the trustees of the property or estate. And does not the House perceive that, in the case of *cestui que trust*, considerable advantage is likely to accrue to the Public, in being able to have a permanent body of trustees, not liable to an everlasting change, which any one acquainted with such matters must know is greatly injurious to the parties concerned. Every man who has paid any attention to the concerns of life, must have felt the great inconvenience that sometimes arises from the existing state of things in such matters, especially where there is only one trustee surviving; and under those circumstances, I frankly own, that I think the House ought to give no attention to the opponents of the Bill. But the parties who now come forward to oppose the Bill, should have availed themselves of an early stage for offering their opposition: but at present I submit that, since this motion goes to

the whole principle of the measure, it ought not to be entertained for a single moment at this stage.

Sir George Grey:—Sir, it is extremely inconvenient for the House to be called upon at this stage of the Bill to discuss a question of importance which ought to have been considered on the second reading, or in the Committee on the Bill. If I understand the amendment now proposed by the honourable gentleman opposite (for the House was certainly not very attentive to his remarks), it goes in fact to destroy the whole principle and character of the Bill. Now there may be a question, as far as I can collect from the honourable gentleman, of limited liability, involved in this Bill, and under those circumstances I think it would be advisable that my right honourable friend, the President of the Board of Trade, should give us his opinion on the subject.

Mr. Cardwell:—I did not think it necessary, at an earlier stage of this Bill, to intrude upon the House, having had an opportunity last Session of stating the views which I entertain with regard to it at precisely the same stage at which it has now arrived. We have now got to the consideration of the Bill, and nothing having been said about it in former stages, no opposition having been made to the second reading, and no opposition having been advanced in Committee, we have now arrived at the question of whether there is anything involved in this Bill which should induce us to stop its further progress; at least that is the question now put to me. Now, last year, I saw no objection to this Bill, and, I humbly conceive, there is none now. What is the object of this Bill? Why, there being a large sum of money in the South Sea Company, and the other purposes for which the South Sea Company was incorporated being no longer available or practicable for them, they have brought in this Bill for the purpose of enabling them to engage in new duties. Nobody can fail to be aware that the succession in trusteeship is a difficulty in which great inconvenience is felt, and I cannot conceive that a permanent corporation, having a perpetual existence, is an entirely unfit or unsuitable body for the execution of a permanent trust. But my honourable friend who has moved this amendment objects to this Bill, because it interferes with the principle, that no trustee should derive any benefit from the execution of his trust; but if persons who, wanting trustees, find it much more to their convenience, and a saving of expense in a legal point of view, which an ordinary trusteeship would involve, to pay a small per centage for investing their trust in a public corporation, why should they not be permitted to do so? Then, with regard to the question of responsibility, I think that it will be found that there is an unusual security contained in this Bill for the due execution of the trust. The word speculation has been used in the course of this debate, but there can be no improper or unjustifiable speculation in these trust funds which the company itself would not

check; but there is, besides that, the guarantee fund of 300,000*l.*, which will be subject to the control of an inspector appointed by the Treasury, while it will be in the power of the Court of Chancery to bring all the operations of the company to a close if the guarantee fund should ever fail in amount. It appears to me then that a peculiar case has been made out for this Bill. It is peculiarly a case which Parliament ought to deal with in one of its select Committees, and the Bill having been dealt with in that ordinary and constitutional way, I see no reason why it should not be allowed to proceed to its further stages. I have only one more remark to make, and that is this: last year this Bill was defeated in the House of Lords, on the standing orders. My hon. friend opposite, who has moved this amendment, will correct me if I am wrong; but it was defeated, I believe, by the influence of several learned gentlemen who thought the Bill interfered with their interest.

Mr. S. Follett.—I do not know that personally: I had no personal knowledge of it.

Mr. Cardwell.—That may be; but still that was the cause of its defeat, as those who are interested in the Bill well know.

Mr. S. Follett.—Sir, after this expression of opinion against me, I will not trouble the House to divide.

The motion was accordingly withdrawn.

Mr. Mullings.—I think it would be highly inexpedient to allow a person who has already taken upon himself a trust, to denude himself of that trust, by transferring it to this company under this Bill. I shall therefore move, as a proviso to clause 29, that no executor, administrator, or trustee, having once accepted a trust shall be allowed to rid himself of it under this Bill, unless he is expressly authorised to do so, if he think fit, by the will or instrument creating the trust.

Mr. Bowyer.—Why, practically, that is the very same amendment which the House has just rejected; it proposes to do indirectly, what the former amendment proposed to do directly; and it is simply this: it provides that, unless the instrument or will creating the trust shall, *ex nomine*, direct the trust to be transferred, the company shall not have power to accept it. Now that was just what would have been the effect of the former amendment; and it is proposed for precisely the same purpose, namely, to secure the interests of the attorneys. I think the fact of this Bill being opposed by the attorneys is the strongest argument in its favour. The two great evils of this country are taxes and attorneys. What an attorney is cannot exactly be defined; but it appears to me that he is a professional gentleman who charges 13*s.* 4*d.* for doing something, and 6*s.* 8*d.* for doing nothing. I hope the House will not be deterred from passing this Bill. The company is composed, and is always likely to be composed, of men of the highest eminence, and I am confident that if this Bill passes, it will in a few years introduce a most beneficial change into the management of trust property.

Mr. Malins.—I am sorry to hear the honourable gentleman express himself in the terms which he has just now used. Instead of discussing this Bill as involving a matter of the highest importance, the honourable gentleman has thought fit to appeal to a vulgar prejudice, and to say, forsooth, that the Bill must be sound in principle because it is opposed by the attorneys. It is one of the misfortunes of the opposers of this Bill that it should have to be discussed as a private Bill at all, for a more important subject than that which is involved in the Bill could hardly be discussed by the House. The gentlemen, or most of them, whom I have the honour of addressing, are the owners of a large proportion of the property of the country, and I beg them to remember that it is now proposed for the first time, and in a private Bill too, that every man who has put his property in the hand of trustees in whose personal integrity and character he has the highest confidence, shall have his estate liable, if the trustee dies or is succeeded by an executor, to be handed over to a joint-stock company, to be administered according to the discretion of a board of directors. Now, that such a subject affecting the administration of all the trust property of the country should be brought forward in a private Bill, is greatly to be regretted. The honourable gentleman the member for Lancaster, has reminded the House, that it did not listen with due attention to my honourable friend the member for Bridgewater; and this I will say, that if the House did not listen to my honourable friend, or did not understand what he said, it was not his fault. And when I am told the House did not listen to my honourable friend, I do not blame the House for it, because the House thinks it is merely discussing a private Bill; but the House is sadly misled by that fact, for although it certainly is true that this is a private Bill, it yet involves one of the most important questions of public policy that can possibly be brought under the notice of the House. I do not wish to pledge myself upon the point as to whether the Bill ought to pass or not, but I do say it is a subject that requires the greatest consideration of the House; and if the law ought to be changed, the question should be brought forward in a Government measure by the President of the Board of Trade. I admit that the subject of this Bill should have been discussed at an earlier stage, but since the House has agreed, by a sort of side-wind, to invest the company with these powers, I agree with my honourable and learned friend the member for Cirencester, that before the South Sea Company should be enabled to undertake the trust, it should be first sanctioned by the party creating it.

Mr. Cardwell.—Sir, the reason why this measure is made a private Bill is this: it proposes to constitute, upon certain terms, a new joint-stock company; and Parliament, in its wisdom, has provided that that shall only be done through the instrumentality of a private Bill, which can undergo an investigation in a

Committee upstairs. With regard to the objection that no trust ought to be transferred to the company unless the parties shall have directed it in the will or instrument creating the trust, let me answer that, by reminding the House, that there is a clause in the Bill which provides that no transfer of a trust can be made without the consent of the persons beneficially interested, who are *sui juris*; and if they should not be competent, then it can only be done with the consent of the Court of Chancery.

The amendment was then withdrawn, and the Bill having been considered, it was ordered to be read a third time.

With regard to the alleged delay in opposing the Bill, and taking its promoters by surprise, it should be recollected that a similar measure was opposed last year, and a deputation on the subject attended the Lord Chancellor before the commencement of the present Sessions. The attorneys had no *locus standi* before the Select Committee; but the Law Members of the House were informed of the objections to the Bill, and surely it is competent for the House, at any stage of the proceedings, to strike out or amend objectionable clauses, not only on the consideration of the Bill as amended in Committee, but on the third reading.

EXECUTIONS UPON JUDGMENTS AND PROCESS BILL.

THIS Bill, just introduced by Mr. Crawford and Mr. Napier, to enable execution to issue in any part of the United Kingdom under a judgment obtained in any Court in England, Scotland, or Ireland, and to amend the law as to service of process in the United Kingdom, sets forth in the preamble, that by affording to her Majesty's subjects in England, Ireland, and Scotland respectively more effectual means of enforcing at law pecuniary engagements in one country by persons who reside or possess estates in either of the others, greater confidence will be placed in such engagements, and the interests of her Majesty's subjects throughout the United Kingdom be thereby promoted.

The proposed enactments are as follow:—

I. AS TO EXECUTIONS.

Where final judgment shall have been obtained or entered up, or shall hereafter be obtained or entered up, in any of the Courts of Queen's Bench, Common Pleas, or Exchequer at Westminster or Dublin respectively, or in any other Court of Record in England or Ireland respectively, for any debt, damages, costs, or rent which shall have been thereby adjudged to be paid, on production to the senior Master of the Court of Common Pleas at

Dublin, where such judgment shall have been obtained or entered up in any of the said Courts in England, or to the senior Master of the Court of Common Pleas at Westminster, where such judgment shall have been obtained or entered up in any of the said Courts in Ireland, of a memorial of such judgment in the form contained in the Schedule A. to this Act annexed, signed by the proper officer of the Court where such judgment has been obtained or entered up, and sealed with the seal of such Court, and on the production of an affidavit by the person or persons entitled to the benefit of such judgment, stating the names and description of the party or parties against whom such judgment shall have been obtained or entered up, and also stating the amount due on such judgment, and for interest thereon, such memorial shall be registered in a register to be kept in the Court of Common Pleas in Ireland and at Westminster respectively for that purpose, and to be called in the Court of Common Pleas at Dublin "The Register for English Judgments," and to be called in the Court of Common Pleas at Westminster "The Register for Irish Judgments," and such memorial, when so registered, shall have the effect of a judgment of the Court in which it is so registered for all the purposes of execution; s. 1.

Where any order shall have been made or shall hereafter be made by the Judge of any County Court or District County Court in England, for the payment of any sum of money, or of any costs, charges, or expenses, otherwise than by instalments, or where any decree shall have been pronounced, or shall hereafter be pronounced, by any assistant barrister in Ireland, under the provisions of the Act 14 & 15 Vict. c. 57, or any other Acts or parts of Acts affecting the jurisdiction of such assistant barrister, for the payment of any sum of money, or of any costs, charges, or expenses, otherwise than by instalments, on production to the senior Master of the Court of Common Pleas at Dublin, where such order shall have been made by such County Court Judge in England, or to the senior Master of the Court of Common Pleas at Westminster where such decree shall have been made by such assistant barrister in Ireland, of a copy of such order or decree signed by the Clerk of the Court in which it was made, or pronounced, and sealed with the seal of such Court, and on production of an affidavit by the person or persons entitled to the benefit of such order or decree, stating the names and description of the party or parties against whom such order or decree has been obtained, and also stating the amount due on such order or decree, such order or decree shall be registered in a register to be kept in the Court of Common Pleas at Dublin and at Westminster respectively for that purpose, in like manner as has already been provided in the case of judgments of the Courts of Queen's Bench, Common Pleas, and Exchequer at Westminster and Dublin respectively, and for judgments of other Courts of Record in England and Ireland respectively, and such order

or decree when so registered shall have the effect of a judgment in the Court in which it is so registered for all the purposes of execution; s. 2.

Where final judgment shall have been obtained or entered up or shall hereafter be obtained or entered up, in any of the Courts of Queen's Bench, Common Pleas, or Exchequer at Westminster or Dublin respectively, or in any other Court of Record in England or Ireland, for any debt, damages, costs, or rent, on production at the office kept in Edinburgh for the registration of deeds, bonds, protests, and other writs registered in the books of Council and Session of a memorial of such judgment, in the form contained in Schedule A. to this Act annexed, signed by the proper officer of the Court where such judgment has been obtained or entered up and sealed with the seal of such Court, and on production of an affidavit by the person or persons entitled to the benefit of such judgment stating the names and description of the party or parties against whom such judgment has been obtained or entered up, and also stating the amount due on such judgment and for interest thereon, such memorial shall be registered in like manner as a bond executed according to the law of Scotland, with a clause of registration therein contained; and decreet shall be interposed to such memorial for the amount of such judgment and the interest due thereon, and for interest on such judgment from the date of such decreet until paid, on which decreet execution shall pass in like manner as execution passes on a decreet interposed to such bond, and shall have the like effect upon and against the person or persons against whom such judgment shall have been obtained, as if he or they had executed such bond; s. 3.

Where any decree shall have been pronounced or shall hereafter be pronounced, or any order shall have been made or shall hereafter be made, for the payment of any sum of money, or of any costs, charges, or expenses, by the High Court of Chancery of England or Ireland, on production at the office in Edinburgh kept for the registration of deeds, bonds, protests, and other writs registered in the books of Council and Session of an office copy of such decree or order signed by the proper officer of the Court where such decree or order was pronounced or made and sealed with the seal of such Court, and on production of an affidavit by the person or persons entitled to the benefit of such decree or order, stating the names and description of the party or parties against whom such order has been obtained, and also stating the amount due on such decree or order for interest thereon, such decree or order shall thereupon be registered in like manner as a bond executed according to the law of Scotland, with a clause of registration therein contained, and decreet shall be interposed to such decree or order for the amount of such decree or order, and the interest due thereon, and for interest on such decree or order from the date of such decreet, on which

decreet execution shall pass in like manner as execution passes on a decreet interposed to such bond, and shall have the like effect upon and against the person or persons named in such decree or order as if he or they had executed such bond; s. 4.

Where an order or decree shall have been made or shall hereafter be made by the Judge of any County Court in England, or by any Assistant Barrister in Ireland as aforesaid, for the payment of any sum of money, or of any costs, charges, or expenses, otherwise than by instalments, on production at the office in Edinburgh kept for the registration of deeds, bonds, protests, and other writs registered in the books of Council and Session of a copy of such order or decree, signed by the clerk of the Court in which such order or decree was made or pronounced, and sealed with the seal of such Court, and on production of an affidavit by the person or persons entitled to the benefit of such order, stating the names, and description of the party or parties against whom such order has been obtained, and also stating the amount due on such judgment for principal, interest, and costs, such order shall thereupon be registered in like manner as a bond executed according to the law of Scotland, with a clause of registration therein contained; and decreet shall be interposed to such order, on which execution shall pass in like manner as execution passes on a decreet interposed to such bond, and shall have the like effect upon and against the person or persons named in such order as if he or they had executed such bond; s. 5.

On production to the senior Master of the Court of Common Pleas at Westminster or Dublin of an extract of any decreet of the Court of Session in Scotland which shall have been obtained or shall hereafter be obtained for the payment of any debt, damages, or costs, or for the payment of any money in an action for the payment of money in the said Court of Session, signed by the principal extractor of the Court of Session, and sealed with a Seal to be provided and kept for the purpose at the office of the said principal extractor of the Court of Session, or on production of an extract of any decreet of registration in the books of Council and Session which shall have been obtained or shall hereafter be obtained, signed by the principal keeper of the general register of deeds, bonds, protests, and other writs registered in the books of Council and Session, and sealed with a seal to be provided and kept at the office of the said principal keeper of the general register, or on production of an extract of any decreet of any Sheriff Court or Burgh Court in Scotland which shall have been obtained or shall hereafter be obtained for the payment of any debt, damages, or costs, or for the payment of any money, signed by the clerk of such Sheriff or Burgh Court, and sealed with a seal to be provided and kept for that purpose at the office of such clerk, and on production of an affidavit by the person or persons entitled to the benefit of such decreet,

stating the names and description of the party or parties against whom such decreet has been obtained, and also stating the amount due on such decreet, such extract shall be registered in a register to be kept in the Court of Common Pleas at Westminster and Dublin respectively for that purpose, and to be called the Register for Scotch Judgments, and such extract when so registered shall have the effect of a judgment of the Court in which it is so registered for all the purposes of execution: provided always, that where a note of suspension of any such decreet of any Sheriff or Burgh Court shall have been passed or a sist of execution shall have been granted thereon by the said Court of Session, or any Judge thereof, on the production of a certificate under the hand of the clerk to the Bill Chamber of the Court of Session of the passing of such note or the granting of such sist, to a Judge of the Court in which such extract of such decreet has been registered, execution on such registered extract shall be stayed until a certificate be produced under the hand of the said clerk that such sist had been recalled, or, where the note of suspension has been passed, until there be produced an extract under the hand of the principal Extractor of the Court of Session of a decreet of the said Court repelling the reasons of suspension; s. 6.

II. SERVICE OF PROCESS.

In any action brought in any of her Majesty's Courts of Queen's Bench, Common Pleas, or Exchequer at Westminster, where there is a cause of action which arose within the jurisdiction or in respect of a breach of contract made within the jurisdiction, and where the defendant resides in Scotland or Ireland, it shall be lawful for the plaintiff to issue a writ of Summons against such defendant, in the same manner as it is now competent for a plaintiff to issue a writ of summons against a defendant, being a British subject, who resides out of the jurisdiction of the said Courts, in any place excepting England and Scotland, under the provisions of the Act 15 & 16 Vict. c. 76, and all the provisions of the said last-mentioned Act with regard to writs of summons issuing out of the said Courts shall be applicable to any writ of summons issuing out of the said Courts under the provisions of this Act; and such writ shall be in the form contained in the schedule (B.) to this Act annexed, and shall bear the endorsement contained in the said form; and the time for appearance by the defendant shall be regulated by the distance from England of the place where the defendant is residing; and it shall be lawful for the Court or a Judge, upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, or in respect of a breach of contract made within the jurisdiction, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wil-

fully neglects to appear to such writ, or that he is living out of the jurisdiction of the said Courts, in order to defeat and delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or Judge may seem fit, having regard to the time allowed to such defendant to appear being reasonable, and to the other circumstances of the case: provided always that the plaintiff shall, and he is hereby required, to prove the amount of the debt or damages claimed by him in such action, either before a jury or upon a writ of inquiry, or before one of the Masters of the said Courts, in the manner provided in the said Act last above mentioned, according to the nature of the case, as such Court or Judge may direct, and the making such proof shall be a condition precedent to his obtaining judgment; s. 7.

By the 16 & 17 Vict. c. 113, it is provided, that in any action in the Superior Courts of Common Law in Ireland, "in case it shall be made to appear by affidavits to the satisfaction of the Court in which the action is attached, or in vacation of any Judge of any of the said Courts, that any defendant in any summons and plaint, the cause of action in respect of which the same shall have issued having arisen within the jurisdiction of the Court, has not been served with the writ of summons and plaint in manner therein-before prescribed, and has not, according to the exigency thereof, appeared and taken defence to the action, and that due and proper means were used to serve such writ in the manner aforesaid, or that such defendant is out of the jurisdiction of the Court, and can be properly served through or upon any agent or representative, or any manager of the real or personal estate of such defendant within such jurisdiction, or has removed to avoid service, or on any other good and sufficient grounds, it shall be lawful, upon an application made at any time while the said writ shall be in force, for such Court or Judge to authorise such substitution of service through the Post Office, or in any manner and with such extension of time for service and defence as to them or him shall seem fit; and that the taxing officer shall allow reasonable costs on such proceeding for substituting service or effecting such service as the Court shall have directed or deemed good, and that in default of appearance and defence by such defendant in due time it shall be lawful for the plaintiff to proceed thereon as is thereafter provided:" and it is expedient to provide for the service of such writ of summons and plaint on a defendant, resident in England or Scotland, who cannot be properly served through or upon any agent or representative, or any manager of the real or personal estate of such defendant within the jurisdiction of the said Courts, and who has not removed to avoid service, be it enacted, that in case it shall be made to appear by affidavit to the satisfaction of any of the Superior Courts of Common Law in Ireland in which

an action is attached, or in Vacation of any of the Judges of any of the said Courts, that any defendant in any summons and plaint, the cause of action in respect of which the same shall have issued having arisen within the jurisdiction of the Court, or being in respect of a breach of contract made within such jurisdiction, is resident out of the jurisdiction of the Court in England or Scotland, and that such defendant cannot be properly served through or upon any agent or representative or any manager of the real or personal estate of such defendant within such jurisdiction, it shall be lawful, upon an application made at any time while the said writ shall be in force, for such Court or Judge to authorise such writ to be served upon such defendant in England or Scotland, in such manner and with such extension of time for service and defence as to them or him shall seem fit, and the Taxing Master shall allow reasonable costs on such proceedings for effecting such service as the Court shall have directed or deemed good; and in default of an appearance and defence by such defendant in due time it shall be lawful for the plaintiff to proceed thereon as in the above last-recited Act provided; s. 8.

In any personal action brought in the Court of Session in Scotland to recover any debt, damages, or other money, where there is a cause of action which arose within the jurisdiction of the Court of Session, or in respect of a breach of a contract made within such jurisdiction, and where the defender resides in England or Ireland, it shall be lawful for the pursuer to raise a summons containing the same *inducies* as are at present required by law in the said Court of Session in a summons against a party forth of Scotland, and which shall be served in the same manner; provided always, that in addition to edictal service a notice of such summons together with a copy thereof shall be served personally on such defender by any person competent in England or Ireland to serve any writ of summons 20 days before the summons shall be called in Court, and it shall thereupon be lawful to proceed in such action in common form; provided also, that where the defender has not entered appearance to such summons, it shall be the duty of the clerk to the process to transmit the same to the Lord Ordinary, who shall take the case to *audiamus*, and if the Lord Ordinary shall be satisfied with the productions made with the summons and condescendence, he shall pronounce decree in terms of the libel; but if not so satisfied the Lord Ordinary shall direct such further evidence on the part of the pursuer, and in such manner as the Lord Ordinary may deem necessary; and 10 days' notice of the fact of proof shall be served personally on the defender in the same manner as has already been provided for in case of service of notice of summons; and any decree obtained under the above provisions shall have the same effect, to all intents and purposes, as a decree pronounced by the Lord Ordinary *in foro contradictorie*; s. 9.

III. AFFIDAVITS, BEFORE WHOM SWORN.

All affidavits required by this Act may be sworn before any person before whom affidavits intended to be used in the course of any proceeding in the High Court of Chancery in England or Ireland, or the Courts of Queen's Bench, Common Pleas, or Exchequer at Westminster or in Ireland, or in the Court of Session in Scotland, may now be sworn; s. 10.

IV. SECURITY FOR COSTS.

It shall not be necessary for any plaintiff in any of the Courts of England, resident in Ireland or Scotland, or any plaintiff in any of the Courts in Ireland, resident in England or Scotland, to find security for costs, nor shall it be necessary for any pursuer in any of the Courts in Scotland, resident in England or Ireland, to sue by or sist a mandatory or otherwise to find security for expenses; nor shall it be necessary for any defender in any of the Courts in Scotland residing in England or Ireland, to sist a mandatory, or otherwise to find security for expenses; s. 11.

In any action brought in any Court of England, Ireland, or Scotland, on any judgment or decree which might be registered under this Act in the country in which such action is brought, the party bringing such action shall not recover or be entitled to any costs of suit, unless the Court in which such action shall be brought, or some Judge of the same Court shall otherwise order; s. 12.

Punishment of forgery of signature of officer of Court; s. 13.

SECOND COMMON LAW PROCEDURE BILL.

WE now conclude the extracts from this Bill by giving the clauses relating to Writs of Mandamus and Prohibition, and the proceedings thereon, with several clauses which could not be conveniently arranged under any of the former heads of the Bill.

VIII. MANDAMUS.

The plaintiff in any action in any of the Superior Courts, except Replevin and Ejectment, may endorse upon the writ and copy to be served a notice that the plaintiff intends to claim a Writ of Mandamus, and the plaintiff may thereupon claim in the declaration, either together with any other demand which may now be enforced in such action, or separately, a Writ of Mandamus commanding the defendant to fulfil any duty, in the fulfilment of which the plaintiff is individually interested, and which may now or at any time hereafter be capable of being enforced by mandamus issued out of the Court of Queen's Bench; s. 68.

The declaration in such action shall set forth sufficient grounds upon which such claim is founded, and shall set forth that the plaintiff is individually interested therein, and that he sustains or may sustain damage by the non-

performance of such duty, and that performance thereof has been demanded by him, and refused or neglected; s. 69.

The pleadings and other proceedings in any action in which a Writ of Mandamus is claimed shall be the same in all respects, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages; s. 70.

In case judgment shall be given to the plaintiff that a mandamus do issue, it shall be lawful for the Court in which such judgment is given, besides issuing execution in the ordinary way for the costs and damages, also to issue a peremptory Writ of Mandamus to the defendant, commanding him forthwith to perform the duty to be enforced; s. 71.

The Writ need not recite the declaration or other proceedings, or the matter therein stated, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary Writ of Execution, except that it shall be directed to the party and not to the Sheriff, and may be issued in term or vacation, and returnable forthwith; and no return thereto, except that of compliance, shall be allowed, but time to return it may, upon sufficient grounds, be allowed by the Court or a Judge, either with or without terms; s. 72.

The Writ of Mandamus so issued as aforesaid shall have the same force and effect as a peremptory Writ of Mandamus issued out of the Court of Queen's Bench, and in case of disobedience may be enforced by attachment; s. 73.

The Court may, upon application by the plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the Act required to be done may be done by the plaintiff, or some other person appointed by the Court, at the expense of the defendant; and upon the Act being done, the amount of such expense may be ascertained by the Court, either by Writ of Inquiry, or Reference to a Master, or Judge of a County Court, as the Court or a Judge may order; and the Court may order payment of the amount of such expenses and costs, and enforce payment thereof by execution; s. 74.

Nothing herein contained shall take away the jurisdiction of the Court of Queen's Bench to grant Writs of Mandamus; nor shall any Writ of Mandamus issued out of that Court be invalid by reason of the right of the prosecutor to proceed by action for mandamus under this Act; s. 75.

Upon application by motion for any Writ of Mandamus in the Court of Queen's Bench, the rule may in all cases be absolute in the first instance, if the Court shall think fit; and the writ may bear teste on the day of its issuing, and may be made returnable forthwith, whether in term or vacation, but time may be allowed to return it, by the Court or a Judge, either with or without terms; s. 76.

The provisions of "The Common Law Procedure Act, 1852," and of this Act, so far as they are applicable, shall apply to the plead-

ings and proceedings upon a Prerogative Writ of Mandamus issued by the Court of Queen's Bench; s. 77.

IX. PROHIBITION.

In all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may, in like case and manner as hereinbefore provided with respect to mandamus, claim a writ of injunction against the repetition or continuance of such breach of contract, or other injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and he may also in the same action include a claim for damages or other redress; s. 79.

The writ of summons in such action shall be in the same form as the writ of summons in any personal action, but on every such writ and copy thereof there shall be endorsed a notice that in default of appearance the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction; s. 80.

The proceedings in such action shall be the same as nearly as may be, and subject to the like control, as the proceedings in an action to obtain a mandamus under the provisions hereinbefore contained; and in such action judgment may be given that the writ of injunction do or do not issue as justice may require; and thereupon the like proceedings may be taken to issue and enforce such writ as may now be taken upon a judgment in prohibition; s. 81.

It shall be lawful for the plaintiff at any time after the commencement of the action, and whether before or after judgment, to apply *ex parte* to the Court or a Judge for a writ of injunction to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and such writ may be granted or denied by the Court or Judge upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as to such Court or Judge shall seem reasonable and just: Provided always, that any order for a writ of injunction made by a Judge, or any writ issued by virtue thereof, may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order; s. 82.

It shall be lawful for the defendant in any cause in any of the Superior Courts, in which if judgment were obtained he would be entitled to unconditional relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence, and the said Courts are hereby empowered to receive such defence by way of plea; s. 83.

Any such matter which, if it arose before or during the time for pleading, would be an an-

swer to the action by way of plea, may, if it arise after the lapse of the period during which it could be pleaded, be set up by way of *audita querela*; s. 84.

The Court or a Judge may give relief on like grounds, without plea or *audita querela*, upon a summary application by the defendant, in cases where it shall appear to the Court or Judge upon investigation that there is no real and *bona fide* doubt or dispute as to the law or facts of the case; s. 85.

In case any defence is set up which the defendant might be restrained from setting up by a Court of Equity, it shall be lawful for the Court or Judge, by rule or order to be made in a summary way on motion, to restrain the making of such defence, or to make such rule or order thereon as to such Court or Judge shall appear to be just, subject to such appeal as aforesaid; s. 86.

The plaintiff may reply, in answer to any plea of the defendant, facts which absolutely avoid such plea upon equitable grounds; s. 87.

X. SPECIFIC DELIVERY OF CHATTELS.

The Court or a Judge shall have power, if they or he see fit so to do, upon the application of the plaintiff in any action for the detention of any chattel, to order that execution shall issue for the return of the chattel detained, without giving the defendant the option of retaining such chattel upon paying the value assessed, and that if the said chattel cannot be found, and unless the Court or Judge should otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the said sheriff's bailiwick, till the defendant render such chattel, or, at the option of the plaintiff, that he cause to be made of the defendant's goods the assessed value of such chattel; provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages, costs, and interest in such action; s. 78.

XL ACTIONS ON LOST INSTRUMENTS.

In case of any action founded upon a bill of exchange or other negotiable instrument, it shall be lawful for the Court or a Judge to order that the loss of such instrument shall not be set up, provided an indemnity is given, to the satisfaction of the Court or a Judge, or a Master, against the claims of any other person upon such negotiable instrument; s. 88.

XII. JURISDICTION UNDER SHIPOWNERS' ACT.

The Superior Courts, or any Judge thereof, may, upon summary application, by rule or order, exercise such and the like jurisdiction as may, under the provisions of an Act of Parliament made and passed in the 53rd year of the reign of his Majesty King George the 3rd, intituled "An Act to limit the Responsibility of shipowners in certain Cases," be exercised by any Court of Equity; s. 89.

XIII. MISCELLANEOUS CLAUSES.

False evidence.—Any person who shall, upon any examination upon oath or affirmation, or in any affidavit in proceedings under this Act, wilfully and corruptly give false evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the penalties of wilful and corrupt perjury; s. 90.

Execution to fix bail.—Writs of execution to fix bail may be tested and returnable in vacation; s. 91.

Scire facias on judgment of assets in futuro.—Proceedings against executors upon a judgment of assets in futuro may be had and taken in the manner provided by "The Common Law Procedure Act, 1852," as to writs of revivor; s. 92.

Courts may appoint sittings.—The Superior Courts may appoint and hold sittings either in banc, or for the trial of issues in fact by Judge or jury, at any time or times, whether in term or vacation, not being between the 10th of August and the 24th October; s. 93.

Amendments.—It shall be lawful for the Superior Courts of Common Law, and every Judge thereof, and any Judge sitting at Nisi Prius, at all times to amend all defects and errors in any proceedings under the provisions of this Act, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made, with or without costs, and upon such terms as to the Court or Judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made; s. 94.

General rules may be made by the Judges.—It shall be lawful for the Judges of the said Courts, or any eight or more of them, of whom the chiefs of each of the said Courts shall be three, from time to time to make all such general rules and orders for the effectual execution of this Act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the matters herein contained, and the performance thereof, as in their judgment shall be necessary or proper, and for that purpose to meet from time to time as occasion may require: Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said Courts or of the Judges thereof to make rules or orders, or otherwise to regulate and dispose of the business therein; s. 95.

New forms of writs and other proceedings.—Such new or altered writs and forms of proceedings may be issued, entered, and taken, as may by the Judges of the said Courts, or any eight or more of them, of whom the chiefs of each of the said Courts shall be three, be deemed necessary or expedient for giving effect to the provisions hereinbefore contained, and in such forms as the Judges of such Courts respectively shall from time to time think fit to

order; and such writs and proceedings shall be acted upon and enforced in such and the same manner as writs and proceedings of the said Courts are now acted upon and enforced, or as near thereto as the circumstances of the case will admit; and any existing writ or proceeding the form of which shall be in any manner altered in pursuance of this Act shall nevertheless be of the same force and virtue as if no alteration had been made therein, except as far as the effect thereof may be varied by this Act; s. 96.

Interpretation of terms; s. 97.

Commencement of Act, 24th October, 1854; s. 98.

Short title, "The Second Common Law Procedure Act, 1854;" s. 99.

Act not to extend to Ireland or Scotland; s. 100.

NOTES ON RECENT STATUTES.

COMMON LAW PROCEDURE ACT.

RENEWAL OF WRIT EXPIRED BEFORE ACT CAME INTO OPERATION, s. 12.

Held, that the renewal of a writ of summons which expired before the 24th Oct., 1852, when the 15 & 16 Vict. c. 76, came into operation, must, in order to save the Statute of Limitations, be effected according to the old practice (2 Wm. 4, c. 39, s. 10), by alias and pluries writs, and not under the 12th section of the recent Statute. *Gapp v. Robinson*, 12 C. B. 428.

ORDER FOR LIBERTY TO PROCEED ON QUASI SERVICE OF SUMMONS UNDER s. 17.

The order under the 15 & 16 Vict. c. 76, s. 17, that the plaintiff be at liberty to proceed as if personal service had been effected of the writ of summons, is, where the matter be plain, absolute in the first instance. *Jervis, C.J.*, said:—"There may be cases where the Court would not be justified in allowing the plaintiff to proceed as upon a personal service, but still where there is enough to call upon the defendant to show cause why the order should not be made. This proceeding is given in lieu of the old mode of compelling appearance by distringas. The distringas, it is to be observed, gave the party notice; therefore it should seem that the order under this Statute ought in some way to give the defendant notice. On the other hand, it is difficult to see how such notice is to be given, seeing that the order is made only where it appears that all due diligence has been used to serve the writ, and the party keeps out of the way. Upon the whole, therefore, I see no necessity for serving the rule or order. The

object of the new practice was to save expense. If we are satisfied that the writ came to the knowledge of the defendant, and that he evades service, surely he has all the notice that can reasonably be required. All that the plaintiff wants, is the authority of the Court to proceed as if there had been a personal service." *Baringer v. Handley*, 12 C. B. 730.

SECTION 51, ABOLISHING SPECIAL DEMURRERS, NOT RETROSPECTIVE.

Quere, whether the 15 & 16 Vict. c. 76, s. 51, which enacts, that "no pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer," is retrospective? *James v. Isaacs*, 12 C. B. 794.

NOTES ON EQUITY PRACTICE.

ENTRY OF MARRIAGE OF INFANT DEFENDANT ON RECORD, UNDER ORDER 44 OF AUGUST 7, 1852.

By a settlement on the marriage of a defendant, the dividends on a fund in Court, which were directed to be paid to her for life or until further order, with liberty to apply, were vested in her for her separate use. A petition was then presented by her and her husband for an order to pay the dividends to her separate use, and for the entry on the record of a statement of such marriage, and the nature and effect of the settlement, under the 44th Order of Aug. 7, 1852. The Vice-Chancellor *Stuart* made the order as to the receipt of the dividends, but said, that "it was not intended by the 44th Order to subject the plaintiff, who is *dominus litis*, to be controlled, at the instance of any defendant, as to the mode in which he should amend his bill." *Langdale v. Gill*, 1 Smale & Giffard, 24.

ORDER ABSOLUTE FOR FORECLOSURE.—DECLARATION UNDER TRUSTEES' ACT, 1850, WHERE MORTGAGOR OUT OF JURISDICTION.

Default having been made by the mortgagor in the payment of the amount due to the mortgagee on the day specified by the decree in a foreclosure suit, the Vice-Chancellor *Stuart* in making the order of foreclosure absolute, refused to add a declaration under the 13 & 14 Vict. c. 60, s. 20, that the mortgagor, who was

¹ See *Pinkern v. Sonster*, 21 Law J., N. S., Exch. 336.

out of the jurisdiction, was a trustee for the mortgagee, observing, that "any such order, if made, must be made on a separate application." *Smith v. Boucher*, 1 Smale & Giffard, 72.

OBJECTIONS TO HOLDING THE CHANCERY SITTINGS AT WESTMINSTER.

THE Junior Equity Bar jointly with the Incorporated Law Society on behalf of the solicitors, have applied to the Lord Chancellor to continue the sittings in Lincoln's Inn during the ensuing Easter and Trinity Terms.

The following is the memorial of the solicitors:—

To the Right Honourable the Lord High Chancellor, &c.

The Memorial of the undersigned Solicitors practising in the High Court of Chancery.

SHWETH,—That very great inconvenience and loss of time are occasioned to barristers and solicitors practising in the Court of Chancery by the sittings of the Judges being held at a distance from the Chambers of the Master of the Rolls, the several Vice-Chancellors, Masters in ordinary, and Taxing Masters, the Registrars, Record and Writ Office, and other offices in which the business of the Court is transacted.

That the Chambers of Counsel are situate in or near Lincoln's Inn, and the offices of four-fifths of the solicitors practising in the Courts of Equity are also in that vicinity.

That the alterations in regard to the practice and mode of proceeding before the several Judges at Chambers cannot be satisfactorily and expeditiously conducted unless the sittings of the Courts are continued at Lincoln's Inn.

Your Memorialists therefore most respectfully submit to your Lordship that it would much facilitate and expedite the conduct of professional business in Equity, if your Lordship and the other Judges of the Court would be pleased to direct that as well during the Session of Parliament as at other times the sittings of the Court of Chancery, be holden in Lincoln's Inn and Rolls Yard as the most convenient from their central position, both for the public and the Profession.

And your Memorialists will ever pray, &c.

[Signed by the most eminent firms of solicitors practising in the Inns of Court and vicinity. See p. 423, post.]

PARLIAMENTARY RETURNS RELATING TO THE COURT OF CHANCERY.

THE following important returns have just been made to Parliament on the motion of Mr. Walspole:—

1. Return of the total sum due or paid for salaries and office expenses, under the Act 5 & 6 Vict. c. 103, since the passing of the said Act; and also of the total sum paid for compensation for loss of office and profits to officers, under the same Act, since the passing thereof, up to the 25th day of November, 1853, viz.,

Total sum paid for salaries and office expenses, under the above Act, in the Court of Chancery, since the passing of the Act, up to the 25th day of November, 1853 *	£	s.	d.
	351,639	4	6
Total sum paid for compensation for loss of offices and profits to officers, under the same Act, since the passing thereof, up to the 25th day of November, 1853	437,317	19	1

£788,957 3 7

2. Return of the total sums paid to each of the sworn clerks appointed Taxing Masters, for salary and compensation, under the same Act, since the passing thereof, up to the 25th day of November, 1853, viz.,

	£	s.	d.
To George Gatty	68,811	6	6
To Henry Ramsay Baines	79,343	17	11
To John Wainewright	66,084	13	11
To Richard Mills	72,476	7	7

£286,716 5 11

These sums are included in the total sums due and paid for salaries and compensation for loss of office.

3. Return of the annual amount of compensations awarded to each of the said Taxing Masters under the said Act, in the event of their ceasing to hold the said office, and of the annual sums to be paid to the personal representatives to each of them as compensation after their deaths, and for what number of years after their deaths such payments to their personal representatives are to continue, and out of what funds, and by whom, such payments for salary and compensations are now made and to be made, viz.,

	£	s.	d.
Baines, Henry Ramsay	5,403	2	9
To his representative	2,701	11	5
Gatty, George	5,424	14	4
To his representative	2,712	7	2
Mills, Richard	4,935	9	7
To his representative	2,467	14	10
Wainewright, John	4,500	5	1
To his representative	2,250	2	7

The payments to the representatives continue for seven years. The whole are paid out of the Suits' Fee Fund.

* This sum does not include the amount of expenses from the 25th November, 1852, to 25th November, 1853, as since that time they are not distinguishable from the expenses of the other officers of the Court, but it includes a sum of 68,358l. 14s. 3d., paid to stationers for copying, &c., up to the 25th day of November, 1853.

4. Return of the dates and substances of all orders of Court for the reduction of fees in the Court of Chancery made since the passing of the Act 5 & 6 Vict. c. 103, with the estimated amount per annum of such reductions, and the estimated total amount saved to the suitors thereby from the date of the said orders respectively to November, 1853, viz.,

Order of 22nd March, 1844 :

This order reduced the charge upon copies made in the office of the Clerks of Records and Writs from 10*d.* to 8*d.* per folio, and the total reduction effected from 1845 to 1853 inclusive amounts to 46,765*l.* 7*s.* 8*d.*

Order of 15th April, 1844 :

This order reduced the charge upon copies made in the office of the Examiners from 1*s.* 2*d.* to 8*d.* per folio, and the reduction effected in eight years has been 8,210*l.* 19*s.*

Order of 21st June, 1844 :

This order reduced the charge upon copies made in the office of the Clerks of Records and Writs, and also upon copies made in the office of the Examiners, from 8*d.* to 6*d.* per folio. The reduction effected in nine years has been 49,502*l.* 10*s.* 8*d.*

Order of 13th November, 1844 :

This order reduced the charge upon copies made in the office of the Clerks of Records and writs, and also upon copies made in the office of the Examiners, from 6*d.* to 4*d.* per folio. Reduction in nine years, 49,502*l.* 10*s.* 8*d.*

Order of 12th February, 1845 :

This order reduced the per centage upon the amount of bills of costs, as taxed, which, by an order of the 26th of October, 1842, was made payable in the Taxing Masters' offices, from 4*l.* to 3*l.* per cent. Reduction effected, 40,631*l.* 5*s.*

Order of 3rd March, 1847 :

This order reduced the charges upon copies made in the Report Office from 9*d.* to 4*d.* per folio. Reduction effected thereby in seven years, 32,666*l.* 8*s.* 4*d.*

Order of 23rd February, 1850 :

This order reduced the fees taken in the office of the Principal Secretary to the Lord Chancellor. Reduction effected thereby in three years, 8,703*l.* 4*s.* 4*d.*

Order of 22nd March, 1851 :

This order reduced and abolished fees in the offices of the Masters in Ordinary, the Taxing Masters, the Registrars, the Master of Reports and Entries, the Clerks of Affidavits, the Examiners, and the Clerks of Records and Writs. Reduction effected thereby in two years, 36,700*l.* 5*s.* 8*d.*

Orders of 22nd March, 1851, and 25th October, 1852 :

These orders reduced and abolished fees in all the offices of the Court of Chancery. Re-

duction effected thereby in 1853, 36,672*l.* 15*s.* 9*d.*

The reductions thus effected in the fees previously paid by the suitors have amounted in the last nine years to 309,355*l.* 7*s.* 1*d.*

The payments to the four sworn clerks above named up to the 25th of last November for salaries amounted to 76,108*l.* 13*s.* 2*d.*, and for compensation to 210,607*l.* 12*s.* 3*d.*

GENERAL AND LEGAL EDUCATION.

To the Editor of the Legal Observer.

SIR,—In your number of the *Legal Observer* of the 25th of March, I find you have very fully gone into the above question, but I must say it will be very unfair and most unjust if the gentlemen now under articles of clerkship are to be subject before they can become attorneys, to an examination upon "*literary and scientific attainments.*"

If such an examination be requisite, let it be as you suggest, before their articles are registered, or let it come into operation at the expiration of five years, and then the party might consider whether or not it would be worth while making the attempt; but I think you must see that it would fall very hard upon a parent who has not only paid the stamp, but a premium of 300*l.*, and a loss of five years' service, maintenance, &c. Had such an examination been known, I, for one, might not have placed my son in a profession which, to say the most of, is not a very lucrative one as it at present stands.

Trusting that I may see, by your assistance, the threatened evil stayed, or modified as suggested,

I am, &c.,
A CONSTANT SUBSCRIBER.

SIR,—Observing the recent paragraphs in the newspapers regarding the 'general as well as legal examination of persons applying to be admitted as attorneys, I beg permission to state my case in your influential journal. I have been articled four years, and latterly have been anxiously preparing myself for the day of trial. Many of my acquaintances leave their studies to the last six or eight months, but in hopes of passing creditably, I have already devoted all my spare time for the last year to the reading of such law works as I understand will bear on the questions.

It would be very hard to compel me to lay aside my legal studies, and obtain instruction in languages. I confess that I did not proceed far in classical studies, and have neglected them

since I entered the Profession. A clerk might in the first year or two of his clerkship devote some time to general studies; but whilst engaged in an office of considerable practice, where I am, and I trust, usefully exerting myself for my employer as well as myself, it would now, at a late stage of my term, be very injurious to alter my course.

I may be mistaken, but I trust I have already acquired such general knowledge as will be useful in the practice I expect to obtain, and therefore I respectfully protest against the new regulations applying to persons who have served several years of their clerkship. The examination into classical and mathematical knowledge ought indeed to precede the contract of professional service.

AN ARTICLED CLERK.

SELECTIONS FROM CORRESPONDENCE.

WIDOW'S ADMISSION TO COPYHOLDS.

A gentleman dies, leaving by his will, properly attested, his widow certain copyhold hereditaments as tenant for life. The will is contested by his heir-at-law with the widow; in consequence of which she is prevented, when she comes before the steward of the manor for admission, from paying the fine incident to it. Is the steward bound to admit her?

INCOGNITUS.

SCOTCH LAW OF MARRIAGE.

Your correspondent "E. H. C." is mistaken as to the Scotch Law of Marriage. If the father married the mother of the daughter born a bastard, the latter would no doubt be legitimated, but *not from birth*. It is obvious that were she legitimated from her birth, that there would be *two valid marriages* subsisting at the same time. It were well if your correspondents would consult the authorities before they pronounced their opinions of Scotch law.

A SCOTCH ADVOCATE.

CHANCERY SITTINGS IN EASTER AND TRINITY TERMS.

THE *Lord Chancellor*, on the 29th March, said, that he proposed to sit at Westminster on the first day of Term, as usual; but it might be for the convenience of the Bar to know that, in compliance with what his Lordship understood as the wishes of the great majority, that he intended, during the remainder of the Term, to direct the Sittings of the Court to be in Lincoln's Inn. His Lordship confessed that he adopted this course with regret, as producing a separation of the Common Law and Equity

Bar; but as it was the earnest wish of a large majority of Equity counsel, he felt himself constrained to abandon his own prepossessions and make the concessions they required.

Mr. *Roll* observed, that he understood his learned friend Mr. Selwyn, who had exerted himself much in this matter, represented him as being almost the sole dissentient. Now, personally, he did not care anything about the change, but he did look with regret on this, perhaps, permanent separation of the Legal and Equity Bar.

The *Lord Chancellor* also regretted the separation, but the question had been pressed on him as one in which the Bar were almost unanimous in favour of the change, and he had yielded to their wishes.

Mr. *Wigram* and Mr. *Lee* observed, that the outer Bar were, they believed, quite unanimous, in favour of the continued Sitting in Lincoln's Inn, and very few of the inner Bar objected.

The *Lord Chancellor*, as that was so, consented that the Sitting should be in Lincoln's Inn for the next two Terms; it was, however, an experiment, and he reserved the right of returning to the ancient practice if he found it expedient.

The Memorial of the Solicitors in support of this change of Sitting in the ensuing Terms, will be found at page 421, *ante*. It was presented to the *Lord Chancellor*, on Tuesday last, by the Incorporated Law Society.

NOTES OF THE WEEK.

PRESIDENT OF POOR LAW COMMISSION.

It is much to be regretted that Mr. Baines, the President of the Board of Commissioners, has felt it necessary to resign his office, in consequence of the Government having determined to extend the Law of Settlement and Removal Bill to Scotland and Ireland, in regard to which no communication was made to Mr. Baines, who had bestowed much labour on the English Bill, and which had been framed with the sanction of the Government, independently of Ireland and Scotland.

We are glad to learn that this resignation has been withdrawn, at least for the present, upon the explanation of Lord Palmerston, that the Irish Bill would be a separate measure.

RECORDERSHIP OF BRISTOL.

The Recordership of Bristol, vacated by the election of Mr. Crowder to the Bench, has not yet been filled up, pending the consideration of a memorial to the Home Office upon the subject of the emoluments of the office.

It is, however, believed, that Mr. Serjeant Kinglake will be appointed, in which event Mr. Coleridge would probably succeed the learned serjeant as Recorder of Exeter.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

Drysdale v. Mace. March 16, 1854.

SPECIFIC PERFORMANCE.—MISDESCRIPTION IN CONDITIONS OF SALE OF ANNUITY CHARGED ON PROPERTY.—FEE ON PRODUCTION OF MEMORIAL FOR INFORMATION OF COURT.

Where the conditions on the sale of property stated it to be charged with a life annuity, whereas the annuity was for four lives, and the lives and life of the survivors and survivor: Held, affirming the decision of Vice-Chancellor Stuart, dismissing a claim by the vendor for a specific performance, that the title was not one which could be forced on a purchaser.

The Court required the production of the memorial for their own information, and it was not asked for by the appellant or the respondent, held, that the officer from the Record Office, where it had been deposited, being executed more than 15 years ago, could not claim a fee of two guineas for its production under the Public Records' Act, 1 & 2 Vict. c. 94, s. 9.

In this appeal from the decision of Vice-Chancellor Stuart, dismissing a claim by the vendor for the specific performance of an agreement for the purchase by the defendant of certain property, it appeared that one of the conditions of sale under which the property was put up to auction stated that it was subject to a life annuity, and that the purchaser had refused to complete on the annuity in question proving to be for four lives and the lives and life of the survivors and survivor. Their lordships having sent for the memorial of the annuity from the Clerk of Enrolments, it was ascertained to be at the Record Office, having been executed more than 15 years ago, and the officer from the Rolls' Chapel had only produced it upon the undertaking of the appellant's solicitor for the payment of the fee of two guineas, which he demanded under the Public Records' Act (1 & 2 Vict. c. 94, s. 9).

Malins and *T. Stevens* in support of the appeal.

The Lords Justices (without calling on *Bacon* and *Yonge* for the respondent) said, that the title was not one which could be forced on a purchaser, and the appeal was accordingly dismissed. With reference to the fee claimed by the officer for the production of the memorial, it was not produced in the ordinary acceptance of the word as it was not required by the appellant or the respondent, but by the Court for their information, and was not therefore payable.

In re Keogh's Estate. March 16, 1854.

INCUMBERED ESTATES' ACT.—MOTION FOR ATTACHMENT AGAINST HUSBAND AND

WIFE ON DEFAULT TO ORDER OF COMMISSIONERS.

The Incumbered Estates' Commissioners had issued an order nisi on *M.* and his wife for payment of a sum of money, under the 12 & 13 Vict. c. 77, and the order had been enrolled in this Court on the parties making default and coming to this country: Held, on motion for an attachment against the parties, that the process could only issue against *M.*

THIS was a motion for an order on the Clerk of Records and Writs to issue an attachment against a Mr. Mole and his wife, pursuant to the order nisi of the Incumbered Estates' Commissioners under the 12 & 13 Vict. c. 77, for the payment within 14 days of a sum of money, and in which default had been made, and the parties had come to this country. The order had been enrolled in this Court (reported *ante*, p. 403).

Borrett in support.

The Lords Justices said, that the process could only issue against the husband, as it was in a matter and not in a suit.

Master of the Rolls.

Lewis v. Clowes. March 17, 18, 1854.

MORTGAGEES' POSSESSION UNDER FORECLOSURE DECREE AND IN RIGHT OF MORTGAGOR.—STATUTE OF LIMITATIONS.

Certain property was devised by his father's will, dated in 1818, to *Timothy L.* on the death of his mother, and he had mortgaged the same to the defendants, who in 1834 obtained a foreclosure decree. In 1852, another will, dated in 1820, was discovered, under which the plaintiff, the testator's grandson, was entitled on the determination of the life estate, and this will was proved and probate revoked of the other: Held, on bill filed to recover possession against the mortgagees, that the possession of *Timothy L.* must be reckoned as that of the defendants, and that therefore the Statute of Limitations was a bar to the recovery of the property, and the bill was dismissed, with costs.

ON the death of the testator in 1831, a will was found dated in 1818, whereby he devised certain property to his wife for life, with remainder on her death to his son *Timothy Lewis*, who it appeared had mortgaged the same at various times to a large amount, and in 1834 the mortgagees obtained a foreclosure decree and obtained possession of the property. Another will dated in May, 1820, was however discovered in 1852, whereby the property was given, on the determination of the wife's life estate, for the testator's grandson, *William Lewis*. The will was duly proved in the Prerogative

Court, and probate of the former will was revoked. Mr. W. Lewis now filed this bill against the mortgagees to recover possession of the property.

Roupeil, Piggett, and Smythe for the plaintiff; *R. Palmer and Amplett* for the defendants; *Shapter* for the trustees.

The Master of the Rolls said, that the effect of the foreclosure decree was to place the mortgagees in exactly the same position, with reference to the property, as the mortgagor stood. The adverse possession of the plaintiff's father must therefore be reckoned as that of the defendants, and the Statute of Limitations was consequently a complete bar to the recovery of the property. Although the case was a very unfortunate one, there was no alternative but to dismiss the bill with costs.

Reeves v. Baker. March 23, 1854.

WILL.—CONSTRUCTION.—ABSOLUTE GIFT TO WIFE.—PREGATORY TRUST.

A testator gave the residue of his property to his wife, "her heirs and assigns for ever, being satisfied that if it please God to take me first, she will dispose of the same, by will or otherwise, in a fair and equitable manner to our united relations, bearing in mind that my relations are generally in better worldly circumstances than her own." Held, that the wife took absolutely, and that there was no trust created.

THE testator, by his will, gave the residue of his property, whether freehold or personal, after payment of his funeral and testamentary expenses and debts, to his wife, "her heirs and assigns for ever, being satisfied that if it please God to take me first, she will dispose of the same, by will or otherwise, in a fair and equitable manner to our united relations, bearing in mind that my relations are generally in better worldly circumstances than her own." A question now arose, whether this was an absolute gift.

Follett and W. W. Cooper for the plaintiffs; *Roupeil, R. Palmer, Hallett, Jervis, T. Stevens, Radall, F. P. Morris, Giffard, Druce, Bovill, Cole, Dewnap, and Sheebears, jun.*, for other parties; *Lloyd, Rogers, and Terrell*, contra.

The Master of the Rolls said, that the gift was absolute, and that no trust was created.

Vice-Chancellor Kinkersley.

Tyrrell v. Clarke. Jan. 17, 1854.

WILL.—CONSTRUCTION.—APPORTIONMENT OF DIVIDENDS ON DEATH OF TENANT FOR LIFE.

A testator bequeathed to his wife "the dividends which shall or may happen to become due and payable in her lifetime" on certain stock, and after her decease "all subsequent dividends" in trust as therein mentioned: Held, that, on her death, her representatives, were entitled to an apportionment under the 4 & 5 Wm. 4, c. 22.

THE testator, by his will, gave and bequeathed to his wife "the dividends which shall or may happen to become due and payable in her lifetime" on certain bank stock and annuities, and after her decease "all subsequent dividends" in trust as therein directed. Upon the death of the testator's widow, a question arose, whether her representatives were entitled under the 4 & 5 Wm. 4, c. 22, to an apportionment of the dividends due up to the time of her death.

Bailey and F. S. Williams for the plaintiffs; *C. Hall* for the widow's representatives; *Lee, J. V. Prior, and Bagshawe* for the residuary legatees.

The Vice-Chancellor said, that there must be an apportionment, unless where the testator "expressly stipulated," or used terms so clear as would amount to an express stipulation that none should take place, and that it was not sufficient to infer such intention from the will, and in the present case there must therefore be an apportionment.

In re Bradford Grammar School. March 3, 1854.

CHARITY.—INVESTMENT IN LAND IN FEE-SIMPLE UNDER ACT OF PARLIAMENT.—LAND HELD FOR LONG TERM OF YEARS.

The governors of a charity were empowered by private Act of Parliament to lay out surplus moneys in the purchase of lands held in fee simple or copyholds: Held, that they could not invest in land the title to which was deduced from a deed of partition, dated in 1801, which contained a recital that the parties thereto were seised in fee simple or otherwise well entitled for a long term of years, although the chief clerk certified such purchase would be most beneficial.

By their private Act of Parliament, the governors of the above school were empowered to sell the charity lands, and to build a new school-house, and to invest the surplus in the purchase of land held "in fee simple" or copyholds. It appeared from the chief clerk's certificate that the purchase, which was proposed by the petitioners of certain land in Kirkby Mallan, Yorkshire, would be most beneficial, but that the title was deduced from a deed of partition in 1801, which contained a recital that the parties thereto were seised in fee simple or otherwise well entitled for a long term of years, and it also appeared that the land had been mortgaged as a fee simple, and that no rent had ever been paid.

Bird now applied in support of this petition for the sanction of the Court to the purchase.

The Vice-Chancellor said, that as this was a charity, and the land, if held only for a long term was not of the same value as a fee simple, in which, according to the Act of Parliament, the investment must be made, the order could not be granted as asked.

Apeland v. Watt. March 28, 1854.

INTERLOCUTORY MOTION BY CLAIMANT IN SUIT TO RESTRAIN RECEIPT OF STOCK BY LEGAL PERSONAL REPRESENTATIVE.

An interlocutory motion was refused for an injunction to restrain the legal personal representative of a testator from receiving certain stock standing in his name, in a suit to establish the plaintiffs' claim against the estate, where it was not shown the defendant was insolvent, or that the stock was specifically bequeathed to the plaintiffs, although it was alleged that if the plaintiffs succeeded in the suit part of the stock would be liable as assets.

THIS was an interlocutory motion for an injunction to restrain the defendant in this suit, which was instituted against the legal personal representative to establish the plaintiffs' claim against the estate of a testator, from receiving certain stock standing in his name.

C. Purton Cooper and Cottrell in support, on the ground that if the plaintiffs were successful, they would be entitled to a portion thereof as assets.

The Vice-Chancellor, without calling on the other side, said, that as it was not shown the defendant was insolvent, or that the stock was specifically bequeathed to the plaintiffs, the motion must be refused.

Vice-Chancellor Stuart.

Brewer v. Swirles. March 18, 1854.

MARRIED WOMAN.—LIABILITY OF TRUSTEES FOR BREACH OF TRUST COMMITTED WITH HER CONCURRENCE.

Trustees under a marriage settlement of a fund, held in trust for such persons as the wife by deed or will should appoint, and in default then to her for her separate use for life, with remainder to her next of kin, invested the fund in the purchase of a share in a ship with the wife's concurrence, and the money was lost. She afterwards appointed to her two children, and their next friend filed a bill against the trustees for a restoration of the trust fund: Held, that the relief asked could not be granted, and the bill was accordingly dismissed.

By the settlement on the marriage of Mr. and Mrs. Brewer, certain real property was conveyed on trusts for sale, and for the proceeds to be invested in government or real securities, and the proceeds were directed to be held in trust for such persons as the wife should by deed or will appoint, and in default then in trust for her to her separate use for life, with remainder over on her death to her next of kin. It appeared that the proceeds had, with Mrs. Brewer's concurrence, been invested in the purchase of a share in a ship, and had been totally lost, and that she had, after such loss, appointed the fund by deed in trust for her two children after her death. This bill was now filed by the next friend of the children against the trustees for the restoration of the trust fund.

Bacon and J. V. Prior for the plaintiffs; Batten for the next of kin; Elmsley and Cairns for the trustee and representative of the deceased trustee, were not called on.

The Vice-Chancellor said, that although Mrs. Brewer was under the disability of coverture, yet in respect of this fund she was a *feme sole* and sole *cestui que trust*, and was not therefore protected by her coverture so as to make the trustees liable for what they had done with her knowledge and concurrence. The appointment, which had been made as if the trust fund were in existence, was a mere device to render the trustees liable, and the relief asked could not be granted. The bill would be dismissed, but without costs.

Manning v. Purcell. March 23, 1854.

WILL.—CONSTRUCTION.—WHAT PASSES UNDER WORDS "MONEYS" AND "FURNITURE."

A testator gave to his wife absolutely, all his "moneys, household furniture," &c. It appeared that a sum deposited with stakeholders pending a bet on a horse, had been returned to the widow on his death, according to the usual practice, and it also appeared that there was a further sum standing to his account at a bank, and also to the deposit account there, at interest, as well as money in his house: Held, that the widow was entitled to all the sums in question as included under the word "moneys."

The testator had a private house as well as the tavern, of which he was proprietor: Held, that the furniture at both places passed to the widow.

THE testator, by his will, gave to his wife absolutely all his "moneys, household furniture," &c., and the residue of his estate real and personal, to her for life, with remainder on her death among his children then living, and the issue of such as were dead. It appeared that the testator died without leaving any children, and that a sum of money had been deposited in the hands of stakeholders pending a bet on a horse, but that it had been returned to the widow on the testator's death before the race came off according to the usual practice, and that there was another sum standing to his account at the London and Westminster Joint-Stock Bank, and a further sum to the deposit account at interest, besides a sum at his private house. The testator had a private residence as well as a tavern of which he was proprietor, and the question now arose in this administration suit by the testator's father, who was the sole next of kin, on appeal from the Chief Clerk's certificate, whether the money returned by the stakeholders, and that standing to the deposit account at the above bank, and the furniture at the tavern passed to the widow absolutely.

Bacon, Renshaw, and Needham for the plaintiff; Malins and C. Hall for the widow, who had since married Mr. Purcell; Wigram and

Selwyn for the trustees of their settlement; *Hanson* for another party.

The Vice-Chancellor said, that the sums in question passed under the word "moneys," as did also the furniture at the tavern and private residence under the term "furniture,"—the costs of all parties to come out of the residue.

Vice-Chancellor Wood.

In re Manning's Trust. Feb. 20, 1854.

TRUSTEES' ACT, 1850. — APPOINTMENT OF NEW TRUSTEES.—VESTING ORDER.

A vesting order was made under the 13 & 14 Vict. c. 60, s. 34, in new trustees appointed by the Court upon the death of those appointed by a deed without power of appointing new trustees, and notwithstanding there might be some party who could convey to such trustees.

Pearson appeared in support of this petition under the 13 & 14 Vict. c. 60, s. 34, for the appointment of new trustees and for a vesting order. It appeared that the trustees were dead, and that there was no power in the deed to appoint new trustees.

The Vice-Chancellor, after consulting the other Judges, said, that a vesting order would be made, notwithstanding there might be some party who could convey to the new trustees.

Smith v. London and South Western Railway Company. March 3, 1854.

INJUNCTION TO RESTRAIN INFRINGEMENT OF PATENT.—ACCOUNT WHERE LACHES.—EXPIRATION OF PATENT.

Where the assignees of a patent had, by their laches in applying after the knowledge of its infringement by the defendants was brought to them, lost their relief in equity to an injunction, held that they could not obtain an account.

The patent expired before the application for an injunction to restrain the breach which was committed previously, and for an account: Quære, whether the application could be made?

This bill was filed by the assignees of a patent granted in 1835 for improvements in the manufacture of wheels to railway engines. It appeared that in 1845 the plaintiffs had discovered the invention was used by several railway companies, and that in 1852 an action was brought against the present defendants, and on the trial in May, 1853, the plaintiffs obtained a verdict, and an application for a new trial had been refused. The plaintiffs then gave notice that they should claim compensation for the infringement of their patent, and eventually this bill was filed for an injunction restraining the use of the wheels, and for an account of the profits made by the defendants. The patent had expired in 1849.

W. M. James and Selwyn for the plaintiffs; *Daniel and Baggallay* for the defendants.

The Vice-Chancellor said, that according to

Baily v. Taylor, 1 Russ. & Myl. 73, this Court had no jurisdiction to give the plaintiff a remedy for an alleged piracy by directing an account, unless he could make out he was entitled to an injunction, and his remedy in such case must be at law. It appeared a knowledge of the use of the wheels had been brought to the plaintiffs, but they had not given the defendants any notice of the patent being their property, and the injunction must be refused on the ground of delay, and it became therefore unnecessary to decide on the effect of the expiration of the patent before the application. The bill would accordingly be dismissed, with costs.

West v. Ray. March 8, 1854.

SPECIAL CASE AS TO VALIDITY OF EXECUTION OF POWER OF APPOINTMENT IN SETTLEMENT BY WILL.

The donee of a power in a settlement for appointment, by any deed or deeds, writing or writings, under hand and seal, to be attested by two or more credible witnesses, appointed by will since the Wills' Act (7 Wm. 4, and 1 Vict. c. 26): Held, on special case, that the power was not well executed.

THIS was a special case as to the validity of the appointment, made under a power in a settlement, which provided for its exercise by any deed or deeds, writing or writings, under hand and seal, to be attested by two or more credible witnesses. It appeared that the donee of the power had appointed by will since the Wills' Act (7 Wm. 4 and 1 Vict. c. 26) came into operation.

The Vice-Chancellor said, that as the settlor had used the words in question, and had given no direction for the execution of the power by will, in which case the 7 Wm. 4 & 1 Vict. c. 26, s. 10 would have been applicable, the power had not been well executed.

Stroud v. Norman. Nov. 16, 1853; Feb. 10, 1854.

POWER OF APPOINTMENT.—CONDITION ATTACHED.—ELECTION.

By a marriage settlement, stock was settled on the wife for life, and at her death in trust for such of the children, and in such shares and proportions and manner and form as she should appoint, and in default, among them equally. The husband by his will, directed the conversion of all his real and personal estate and division among his children (of whom there were four daughters and five sons). The wife, by deed, appointed to the daughters under the power, but upon the condition that they respectively should, at the request in writing of herself, her executors or administrators, release all their shares in the trust declared by her husband to her five sons, and on their refusal, there was a gift over among the sons: Held, that the condition was valid, not being inconsistent with the scope

of the power, and that the plaintiff (a daughter) was put to her election.

UPON the marriage of Mr. and Mrs. Norman, in 1813, certain stock was settled in trust to pay the dividends to the separate use of the wife, without power of anticipation, and at her death in trust for each of the children of the marriage, and in such shares and proportions and manner and form as she should by any deed or deeds, with or without power of revocation, or by will, direct or appoint, and in default in trust for the children equally. It appeared that Mr. Norman predeceased his wife, whom he appointed his executrix with another person, whom he survived, and directed them to sell and convert all his real and personal estate, and to stand possessed of the capital after the death of his wife, to whom the dividends were payable for life, in trust for all his children at 21 or marriage. There were nine children, who all attained 21. One of the daughters (the plaintiff) had, on her marriage, assigned her ninth share under her father's will, and also her share under his settlement on certain trusts. It further appeared that the widow had, by two deeds, appointed under the power, about one-fourth of the settled fund to the three other daughters, and a sum rather less in amount to the plaintiff, upon the condition that they respectively should, at the request in writing of herself, her executors or administrators, release all and every the parts or shares of themselves in the stocks, funds, &c., under the trusts declared by the will of Mr. Norman, to her five sons, and on their refusal to execute such release, the sum of stock appointed in favour of the daughter so refusing should be in trust for all the sons absolutely in equal shares. The daughters, with the exception of the plaintiff, released on the request of Mrs. Norman's executors, and their shares (the stock having been paid into Court under the 10 & 11 Vict. c. 96) were paid out, and the plaintiff's share was carried to a separate account. The executors then, by notice in writing, requested her to execute a release, whereupon she filed this bill for a declaration that she was entitled to her share under her father's will, or if she were bound to elect for a reference as to which was most for the benefit of the parties interested under her settlement.

Elmsley and G. W. Collins for the plaintiff; *Rolt and T. Stevens* for the defendants; *E. F. Smith* for the daughters, who had released and who had been made parties by amendment.

Cur. ad. vult.

The Vice-Chancellor said, that although an appointment under a power could not be made with a condition attached to be performed by the appointee, and the condition would be void, yet in the present case the limitation was for a certain payment to the sons, and which was not inconsistent with the scope of the power, and the plaintiff and her trustees were therefore bound to elect whether they would take under the appointment, or under the father's will, and a reference would be directed as to what course it would be for the benefit of

the parties interested under the settlement to adopt.

Fremmen v. Fremmen. March 24, 1854.

SUIT TO SUPPLY OMISSION OF TESTATOR TO SURRENDER COPYHOLDS TO USE OF HIS WILL.—EFFECT OF SUBSEQUENT OF PRIOR WILL.—COSTS OF CUSTOMARY HEIR.

A testator by his will devised certain copyhold estates (inter alia) to his wife for life, with remainder on her death to his daughter and two younger sons therein named, and by a subsequent will he gave to his wife for life all the stock, crop, and effects of his real and personal estate, and after her death he gave all his crop, property, personal estates, and effects among his children (except his eldest son) living at his death. No surrender was made by the testator of the copyholds to the use of his will: Held, on bill filed, that there must be a declaration to supply the omission in favour of the children under the first, and not under the second will, at their expense.

The customary heir having failed in his claim that the copyholds were undisposed of, was held not entitled to his costs of suit.

THE testator, by his will, dated in June, 1804, devised certain freehold, leasehold, and copyhold estates in trust for his wife for life, subject to the maintenance and education of his daughter and two youngest sons therein named, with remainder on her death to them absolutely, giving a sum of 10*l.* to his eldest son by way of acknowledgment; and by another will, dated in 1807, after reciting that his eldest son would become on his death entitled to his freehold estates, he gave to his wife for life all the stock, crop, and effects of his real and personal estates, and after her death he gave all his crop, property, personal estates and effects among his children (except his eldest son) living at his decease. It appeared that the testator had not surrendered the copyhold estates to the use of his will, and this suit was therefore instituted by the children under the first will to have this omission supplied.

W. M. Jones and Metcalfe for the plaintiffs; *Rolt and W. Hislop Clarke* for the younger children entitled under the second will, contended the surrender should be to the use of such will; *Chandless and Berkeley* for the customary heir contra on the ground that the second will revoked the first, and that there being no words sufficient to pass the copyhold estates, they were undisposed of.

The Vice-Chancellor said, that the second will did not operate on the copyholds, nor show any intention by the testator to alter the limitation under the previous will which was inconsistent with the second, and that the plaintiffs were therefore entitled to a declaration as asked for a surrender at their expense—no costs of the suit of the heir-at-law who had failed entirely in his claim.

The Legal Observer,

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SATURDAY, APRIL 8, 1854.  
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REMUNERATION OF SOLICITORS.

GRADUATED PER CENTAGE.

It will be admitted that the present system of remuneration stands on an unsatisfactory footing. Unlike other Professional men, the lawyer is not remunerated for his skill and knowledge which it takes years to acquire, but he is paid as a mere copyist or mechanic, according to lengths, and the amount of mechanical and formal work which he performs. Hence all alterations which tend to simplify proceedings and abolish useless forms, though very proper and necessary as regards themselves, tell with increased severity on the Profession.

The remedy appears to be in the adoption of a system of charging more in harmony than the present with the feelings and wants of the times, and based upon services actually rendered. What the lawyer is entitled to and requires is a fair remuneration for his services, which consist of his skill and knowledge of his profession, and of the labour and responsibility incurred in the conduct of the business entrusted to him. And what the public desire is, that the remuneration for those services shall bear some proportion to the value derived from them, and to the amount and importance of the business transacted, and, above all, at least in cases of investments of money, that they may know beforehand the amount they are going to pay.

We believe that the system best adapted to meet the views of both parties will be that of a *graduated per centage* in proportion to the value of the property, in the same manner as architects, receivers, surveyors, auctioneers, and brokers, and, in fact, all persons employed in the management and disposal of property, except lawyers, are now paid. We believe that the system is quite as applicable to lawyers as

to any of the other professions or callings which we have named. True, the trouble involved may, in this case, bear a nearer proportion to the value of the property than in the case of lawyers, but that is purely a question of average to be considered in framing the scale of per centage, and that no insuperable objection exists to its adoption by lawyers is shewn by the fact, that the system is already partially adopted by lawyers in Scotland as well as in some parts of the continent; and in order to shew that it is practicable in England, we have prepared the following scale of charges, which is founded for the most part on the Scotch system.

The principal features of this scale are that it fixes a graduated scale of per centage to be charged by the vendor's and purchaser's solicitor on sales, mortgages, and leases of property;—establishes a modified system of per centage for settlements, releases of legacies and portions, and partnership deeds, which vary so much in their provisions, and which are not investments of money;—and the abolition of a number of petty charges which are now made for what is mere porter's work, and the establishment of a fresh scale of charges for drawing and engrossing deeds in order to cover those charges, and which is higher on the first 30 folios, and diminishes beyond that number.

It is probable also that in the case of wills, family settlements, trust deeds, and other important instruments, a higher scale might be allowed as in Scotland, and which is arrived at by doubling the charges for drawing:—the object of the Scottish system apparently being (with which we quite concur), to throw the burden on the more intricate and important documents.

Conveyances.

Per centage to be charged by the *vendor's* solicitor on the sale and conveyance of any pro-

perty to include the costs of making out and deducing the title in the usual way, and the cost of the conveyance, to the purchaser; but not to include any charges for perfecting the vendor's title, or of attested copies, nor any costs out of pocket.

When the property is sold in lots, the per centage to be charged not upon the aggregate amount, but separately on each lot.

	£	s.	d.
Consideration under 50l.	3	3	0
Above 50l. to 75l.	5	5	0
Above 75l. to 100l.	8	8	0
Above 100l. to 500l. the above rate for the first 100l., and 5l. per cent. above that amount	28	8	0
Above 500l. to 2,000l.	£	£	£
The above rate for the first 500l. and 4 per cent. above that amount	1,000—	48	8
Above 2,000l. to 5,000l.	2,000—	88	8
The above rate for the first 2,000l. and 3 per cent. above that amount	3,000—	118	8
Above 5,000l. to 10,000l.	4,000—	148	8
The above rate for the first 5,000l. and 1½ per cent. above that amount	5,000—	178	8
Above 10,000l. to 25,000l.	6,000—	193	8
The above rate for the first 10,000l. and 1½ per cent. above that amount	7,000—	208	8
Above 25,000l. to 50,000l.	8,000—	223	8
The above rate for the first 25,000l. and 1½ per cent. above that amount	9,000—	238	8
Above 50,000l. to 100,000l.	10,000—	253	8

Above 10,000l. to 25,000l. The above rates for the first, and half per cent. above that amount 25,000—328 8

Above 25,000l. to 50,000l. The above rates for the first 25,000l. and ½ per cent. above that amount 50,000—390 18

Above 50,000l. the above rates for the first 50,000l. and ½ per cent. above that amount.

Purchaser's solicitor same charges on all sums up to 100l., and one-fifth less on all sums exceeding that amount to include the costs of the investigation of the title, and of the conveyance, and all other incidental expenses, except money out of pocket.

Mortgages.

Per centage to be charged by the mortgagees' solicitor on the loan of any sum of money

	£	s.	d.
Under 50l.	3	3	0
Above 50l. and under 75l.	5	5	0
Above 75l. and under 100l.	8	8	0
Above 100l. to 2,000l.	£	£	£
The above rates for the first 100l., and 4 per cent. beyond that amount	500—	24	8
Above 2,000l. to 5,000l., the above rate for the first 2,000l., and 2½ per cent. above that amount	1,000—	44	8
Above 5,000l. to 10,000l., the above rates for the first 5,000l., and 1½ per cent. above that amount	2,000—	84	8
Above 10,000l. to 25,000l., the above rates for the first 10,000l., and 1½ per cent. above that amount	3,000—	109	8
Above 25,000l. to 50,000l., the above rates for the first 25,000l., and 1½ per cent. above that amount	4,000—	134	8
Above 50,000l. to 100,000l., the above rates for the first 50,000l., and 1½ per cent. above that amount	5,000—	159	8
Above 100,000l. to 250,000l., the above rates for the first 100,000l., and 1½ per cent. above that amount	6,000—	174	8
Above 250,000l. to 500,000l., the above rates for the first 250,000l., and 1½ per cent. above that amount	7,000—	189	8
Above 500,000l. to 1,000,000l., the above rates for the first 500,000l., and 1½ per cent. above that amount	8,000—	204	8
Above 1,000,000l. to 2,500,000l., the above rates for the first 1,000,000l., and 1½ per cent. above that amount	9,000—	219	8
Above 2,500,000l. to 5,000,000l., the above rates for the first 2,500,000l., and 1½ per cent. above that amount	10,000—	234	8

Above 10,000l. to 25,000l., the above rates for the first 10,000l., and ½ per cent. above that amount £ £ s. 25,000—309 8

Above 25,000l. to 50,000l., the above rates for the first 25,000l., and ½ per cent. above that amount 50,000—371 18

Above 50,000l., the above rates for the first 50,000l., and ½ per cent. above that amount. Mortgagor's solicitor same charges on all sums up to 100l., and ¼th less on all sums exceeding that amount.

Leases.

Per centage to be paid to lessor's solicitor on all leases at rack-rent in lieu of all charges, except costs out of pocket, viz. :—

	£	s.	d.
Annual rent under 20l.	5	5	0
20l. to 25l.	6	6	0
25l. to 30l.	7	7	0
30l. to 40l.	8	8	0
40l. to 50l.	10	10	0
50l. to 75l.	12	12	0
75l. to 100l.	15	15	0

Above 100l. the above rates up to 100l., and 5 per cent. beyond that amount up to 500l., and 2½ per cent. beyond 500l. up to 1,000l. £ £ s. 500—35 15 1,000—45 5

Above 1,000l. 1 per cent.

Lessee's Solicitor's charges.

	£	s.	d.
Rent under 50l.	3	3	0
50l. to 100l.	4	4	0
100l. to 500l.	5	5	0
500l. to 1000l.	6	6	0

Above 1,000l. 10s. 6d. for every 5,000l.

Agreements for letting lands and houses at rack-rent not exceeding 10l.—1l. 1s., and for every 10l. beyond the first 1l. 1s., to include all charges except the stamp.

Building Leases.

Per centage to be charged on the value of the consideration, if any, but if no consideration, then on the value of the leasehold interest, and the value of the ground-rent estimated at 20 years' purchase, viz. :—

	£	£	s.
Not exceeding in value	100—	5	0

Above 100l. 5 per cent. for the first 100l., and 1 per cent. on all sums above that amount up to 1,000l. 1,000—14 0

Above 1,000l., the above rates for the first 100l., and ½ per cent. up to 3,000l. 24 0

Above 3,000l., the above rates for the first 3,000l., and ½ per cent. up to 5,000l. 29 0

Above 5,000l., the above rates for the first 5,000l., and ½ per cent. above that amount 47 15

Lessee's Solicitor's charges.

	£	s.	d.
Consideration under 500 <i>l.</i> . . .	3	3	0
500 <i>l.</i> to 2,000 <i>l.</i> . . .	4	4	0
2,000 <i>l.</i> to 4,000 <i>l.</i> . . .	5	5	0
4,000 <i>l.</i> to 7,000 <i>l.</i> . . .	6	6	0
7,000 to 10,000 <i>l.</i> . . .	7	7	0
Above 10,000 <i>l.</i> , 5 <i>s.</i> for every 1,000 <i>l.</i>			

Marriage Settlements.

	£	s.	d.
Incomes not exceeding 50 <i>l.</i> . . .	5	5	0
Exceeding 50 <i>l.</i> and not 100 <i>l.</i> . . .	10	10	0
„ 100 <i>l.</i> and not 150 <i>l.</i> . . .	12	12	0
„ 150 <i>l.</i> and not 200 <i>l.</i> . . .	15	15	0

Exceeding 200*l.*, the above rate for the first 200*l.*, and 5*s.* for every 100*l.* beyond that amount.

Exceeding 1,000*l.*, the above rates for the first 1,000*l.*, and 2*l.* 12*s.* 6*d.* for every 100*l.*, besides the charges for drawing, copying, and engrossing, according to length.

Legacies, Portions, &c.

Discharges from legacies or portions under wills, or settlement to be paid by the legatee, in addition to the charges for drawing, copying, and engrossing, according to length, where a release is taken.

	£	s.	d.
Not exceeding 200 <i>l.</i> 1 per cent. . . .	2	0	0
Exceeding 200 <i>l.</i> , 1 per cent. for the first 200 <i>l.</i> , and $\frac{1}{2}$ per cent. beyond that amount to 1,000 <i>l.</i> . . .	6	0	0

Above 1,000*l.*, the above rates for the first 1,000*l.*, and $\frac{1}{2}$ on all sums above that amount.

Partnership Deeds.

Ad valorem on the amount of stock, where the stock is defined—

	£	s.	d.
Not exceeding 500 <i>l.</i> . . .	5	5	0
Exceeding 500 <i>l.</i> and not 1,000 <i>l.</i> . . .	6	6	0
„ 1,000 <i>l.</i> „ 2,000 <i>l.</i> . . .	7	7	0
„ 2,000 <i>l.</i> „ 3,000 <i>l.</i> . . .	8	8	0
„ 3,000 <i>l.</i> „ 5,000 <i>l.</i> . . .	10	10	0
„ 5,000 <i>l.</i> „ 7,000 <i>l.</i> . . .	12	12	0
„ 7,000 <i>l.</i> „ 10,000 <i>l.</i> . . .	15	15	0

Exceeding 10,000*l.*, for every additional 1,000*l.*, 10*s.* 6*d.*

Besides the charges for drawing, copying, and engrossing according to length, where the stock is not defined, double regulation fees to be charged for drawing, according to length.

Money Bonds.

Except when given as a collateral security, 1 per cent. up to 500*l.*

Beyond 500*l.*, the above rate for the first 500*l.*, and $\frac{1}{2}$ per cent. above that amount.

General charges for deeds—no charges to be made for drawing, copying, or engrossing any deed where an ad valorem duty is charged, except where otherwise provided for, nor for any attendance or correspondence relating to any such deeds, and in no case shall any charges be made for instructions for any deed,

for attending the solicitor on the other side therewith, for attending to get duty impressed, for attending, making appointment to execute, or for attesting execution of any deed, but in lieu thereof the following shall be allowed for drawing, copying, and engrossing any such deed, viz. :—

	£	s.	d.
Drawing, not exceeding one skin of 15 folios . . .	2	2	0
2nd ditto ditto . . .	1	10	6
And for each skin of 15 folios, beyond the first 15 folios . . .	1	1	0
Copying, for each skin of 15 folios . . .	0	5	0
Engrossing 1st skin of 15 folios . . .	0	15	0
And for each skin beyond the 1st . . .	0	7	6

Result.

FOLIOS 30.		FOLIOS 30.	
Present Rate.		Proposed Rate.	
	£ s. d.		£ s. d.
Drawing . . .	1 10 0	Drawing . . .	3 12 6
Copying and engrossing . . .	1 10 0	Engrossing . . .	1 2 6
Attendances . . .	2 0 0	Copying . . .	0 10 0
	£5 0 0		£5 5 0
FOLIOS 40.		FOLIOS 40.	
	£ s. d.		£ s. d.
Drawing . . .	2 5 0	Drawing . . .	4 13 6
Copying . . .	1 15 0	Copy . . .	0 15 0
Engrossing . . .	1 10 0	Engrossing . . .	1 10 0
	£6 10 0		£6 18 6
	£5		

SOUTH SEA COMPANY TRUST BILL.

THE opposition instituted by the Incorporated Law Society against the Private Trust clauses in this Bill has been productive of a few amendments, which render the measure less objectionable, although we still think that the Bill should be confined to the affairs of the Company, and the clauses regarding the administration of private Trusts entirely struck out.

The amendments are as follow :—

“That the Company as regards any Trust undertaken by them shall be subject to the jurisdiction of the Court of Chancery in all respects as ordinary trustees are subject.” (s. 31.)

In the 32nd section it is provided “that trusts undertaken by the Company shall be executed and performed by the Court of Directors, according to the trusts and powers which may be expressed or declared in or by the instrument creating the trust.”

In the 33rd clause authorising trustees to transfer trust property to the Company, the following qualifications are added, requiring :—

“The assent of all parties beneficially interested sui juris, or if any such parties

should be incompetent to consent, then with the assent of the Court of Chancery, on an application to be made by any such trustees or any cestui que trust in a summary manner, or otherwise as the Court may direct, and upon such terms as to the remuneration to be paid to the Company, as may be agreed upon with the parties so interested as aforesaid, or as the Court shall approve."

The words in italics were introduced upon the consideration of the Bill in the House of Commons.

Still the legal objections to the measure are very strong.

1st. It exempts the Directors from all personal responsibility, and the shareholders of the Company from any responsibility except to the extent of the joint-stock fund. This is the most obnoxious example of limited liability. All other trustees are liable for their breach of trust, neglect, default, or other misconduct affecting the trust, to an unlimited extent.

2nd. Trustees can make no charge for their services unless expressly authorised in the instruments creating the trust.

These rules of equity are proposed to be abrogated in favour of the South Sea Company. The Lord Chancellor surely cannot sanction such an alteration of the general law in a private Bill for the pecuniary benefit of this trading company. The Bill on the very face of it, with regard to existing trusts, contemplates *breaches of trusts* in all those cases in which no provision is made for paying the trustees for performing their duty. In fact, under the powers of this Bill, trustees, after receiving legacies under a will, may as soon after as a decent appearance will permit, transfer the property of the Company, keeping their legacies, and avoiding all risk and trouble. Is not this monstrous?

DISHONOURD BILLS OF EXCHANGE BILL.

We deem it necessary to lay before our readers the principal clauses of this important Bill, introduced into the House of Lords, by Lord Brougham.

The proposed enactments are as follow:—

1. The provisions of this Act shall come into operation on the 24th of October, 1854.

2. All bills of exchange and promissory notes may be protested according to the form of the statutes in such case made and provided.

3. For the purposes of this Act, any attorney of her Majesty's superior Courts of Common Law or any solicitor of the High Court of

Chancery may protest any bill of exchange or promissory note, in the same manner as a notary public, and no greater charge than is by law allowed to such notary public shall be made by such attorney or solicitor.

4. It shall be lawful for the holder of a bill of exchange which has been protested for non-acceptance or nonpayment, or of a promissory note which has been protested for nonpayment, and which bill of exchange or promissory note is duly stamped and dated, and is free from erasures or alterations, except by striking out the name or names of indorsers, to proceed under the provisions of this Act within six months after the date of such bill or note becoming due.

5. In each of the Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas, the Chief Justice or Chief Baron shall appoint one of the Masters to be the registrar of protested bills of exchange and promissory notes, and the said Master so appointed shall keep a register of protested bills of exchange and promissory notes.

6. Every holder of a dishonoured bill of exchange or promissory note which is duly stamped and dated, and is free from erasures or alterations, except as aforesaid, may after protesting the same, register such bill of exchange or promissory note and the protest thereon in the register of any of the aforesaid Courts, and shall thereupon be entitled to judgment on such bill of exchange or promissory note against the parties to such bill or note whose names are signed or endorsed thereon, and also to an order of such Court setting forth that the bill or note and protest have been registered, and containing a copy of the bill or note and protest so registered, together with the judgment of the Court thereon, in the form contained in the schedule (A) to this Act annexed marked No. 1, against such parties to such bill or note, for payment of the same within six days after service of such order, and upon the expiration of six days after service of such order on any party, execution may then issue on such judgment against such party, on affidavit of the service of such order, which affidavit shall be endorsed on such order or annexed thereto.

7. The order shall be endorsed with the name and place of abode of the attorney actually suing out the same, and in case such attorney shall not be an attorney of the Court in which the same is sued out, then also with the name and place of abode of the attorney of such Court in whose name such order shall be taken out; and when the attorney actually suing out any order shall sue out the same as agent for an attorney in the country, the name and place of abode of such attorney in the country shall also be endorsed on the said order; and in case no attorney shall be employed to issue the order, then it shall be endorsed with a memorandum expressing that the same has been sued out by the plaintiff in person, mentioning the city, town, or parish, and also the name of the hamlet, street, and

number of the house of such plaintiff's residence, if any such there be.

8. Every attorney whose name shall be endorsed on any order issued by authority of this Act shall, on demand in writing made by or on behalf of any party against whom such order has issued, declare forthwith whether such order has been issued by him or with his authority or privy, and if he shall answer in the affirmative then he shall also, in case the Court or Judge shall so order and direct, declare in writing, within a time to be allowed by such Court or Judge, the profession, occupation, or quality of the holder of the bill or note on whose behalf such order has been issued, on pain of being guilty of a contempt of the Court from which such order shall appear to have been issued; and if such attorney shall declare that the order was not issued by him or with his authority and privy, all proceedings on the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

9. Any order for payment of a bill or note obtained under this Act may be served in any county.

10. Where any of the parties against whom such order has issued is a corporation aggregate, such order, in so far as such corporation is concerned, may be served on the head officer, clerk, treasurer, or secretary of such corporation.

11. The service of such order shall be by serving a copy thereof personally upon the party or parties against whom it is directed, wherever it may be practicable so to do; but it shall be lawful for the party who has obtained such order to apply from time to time, on affidavit, to the Court out of which such order issued, or to a Judge; and in case it shall appear to such Court or Judge that reasonable efforts have been made to effect personal service on any of the parties against whom it issued, and either that the order has come to the knowledge of such party, or that he wilfully evades service of the same, it shall be lawful for such Court or Judge to direct that execution shall issue as if personal service had been effected.

12. In case any party to a dishonoured bill of exchange or promissory note against whom the holder of such bill or note wishes to proceed under the provisions of this Act is residing out of the jurisdiction of the said Courts of Queen's Bench, Common Pleas, and Exchequer, it shall be lawful for such holder to issue an order in the form contained in the schedule (A.) to this Act annexed marked No. 2, which order shall bear the endorsement contained in the said form, purporting that such order is for service out of the jurisdiction of the Court; and the time for payment of such bill or note in such order mentioned shall be regulated by the distance from England of the place where the party against whom such order has been obtained is residing; and it shall be lawful for the Court or Judge, upon being satisfied by affidavit that the order was duly served on the

party against whom the same issued, having regard to the time allowed to such party for making payment of the bill or note on which such order issued, to direct that such order shall have the effect of a judgment.

13. Any order for service within the jurisdiction may be issued and marked as a concurrent order with one for service out of the jurisdiction, and an order for service out of the jurisdiction may be issued and marked as a concurrent order with one for service within the jurisdiction.

14. It shall be lawful for the party who has been served with any order for the payment of a bill of exchange or promissory note as aforesaid, at any time before execution has issued, or before any writ of *fi fieri facias*, *levari facias*, or *elegit* issued on the judgment on which such order has proceeded has been fully executed, to apply to the Court or a Judge to stay execution, which application must be supported by an affidavit disclosing what would constitute a legal defence to an action on the bill or note against the party seeking to stay execution: provided always, that if the party served with such order shall be arrested on any writ of *capias ad satisfaciendum* issued on the judgment on which such order has proceeded, it shall be lawful for him, at any time before he is discharged from custody, to apply to the Court or a Judge to set aside such writ, and to discharge him from custody, and to stay all further execution, which application shall be supported by affidavit as aforesaid.

15. In any of the said cases, if the Court or Judge shall think that such legal defence has been disclosed, execution shall be stayed, or the party discharged from custody, and execution stayed, as the case may be, and an issue in fact shall be directed to be tried by the parties, or a special case to be stated by them for the opinion of the Court, in the same manner as if the question of fact or of law so directed to be tried or stated had been raised by consent of parties, without pleading, under the provisions of the Common Law Procedure Act, 1852, and in the proceedings in such issue or special case the party seeking to stay execution shall be plaintiff, and the holder of the bill or note defendant: provided always, that the proof of such issue shall rest on the party who would have been bound to prove the same had such issue been raised in an ordinary action brought by the holder of the bill or note: provided also, that where the party who has obtained such order for the payment of a bill of exchange or promissory note, does not claim more than 50*l.* against the party served with such order, such Court or Judge shall, unless satisfied that the trial will involve some difficult question of fact or law, order that the issue shall be tried in a County Court, within whose jurisdiction either of such parties resides or carries on business, or a material witness resides, and for that purpose a writ shall issue directed to the Judge of such County Court, commanding him to try such issue, and to return such writ with the result of the

trial thereon endorsed, at a day certain, in term or in vacation, and thereupon such County Court Judge shall proceed to try such issue in like manner as an ordinary plaint.

16. Within six days after such issue or special case has been directed, or such further time as the Court or a Judge shall appoint, the party seeking to stay execution or to be discharged from custody shall give security for the payment of the bill or note, and interest thereon, and for the costs of protesting and registering the bill or note, and of the order and service of the same, and also for the costs of trying the issue or of the special case, and proceedings thereon, or pay into Court a sum of money which shall be deemed sufficient by such Court or Judge to abide the event of such issue or special case, otherwise execution shall proceed as if no such issue or special case had been directed: provided always, that the Court or Judge may direct that such security shall not be required where the party applying for a stay of execution or discharge from custody can show to the satisfaction of the Court or Judge, upon affidavit, that his alleged signature to the bill or note has been forged, or that circumstances exist which affect the title of the holder with fraud, or that any other circumstances exist which, in the opinion of the Court or Judge, ought to dispense with such security.

17. The costs of such issue in fact or special case shall be in the discretion of the Court.

18. Upon the finding of the jury or of the County Court Judge in any such issue in fact the order for the payment of the bill or note shall be forthwith discharged, or execution shall forthwith proceed thereon, according to such finding, unless the Court or a Judge shall otherwise order, for the purpose of giving either party an opportunity for moving to set aside the verdict or for a new trial; and upon the judgment of the Court in any such special case the order for payment shall be forthwith discharged, or execution shall forthwith proceed thereon, according to such judgment, unless proceedings in error be taken by either party: provided always, that if the plaintiff has been discharged from custody by order of the Court or a Judge, such discharge shall not be a satisfaction of the debt due by such plaintiff on the bill of exchange or promissory note on which the order for payment originally issued.

19. The chief clerk of every County Court shall by virtue of his office be a registrar of protested bills of exchange and promissory notes, and shall keep a register for this purpose.

20. It shall be lawful for the holder of any bill of exchange for the payment of any sum not exceeding 50*l.* which has been protested for non-acceptance or non-payment, or of any promissory note for the payment of any sum not exceeding 50*l.* which has been protested for non-payment, and which bill of exchange or promissory note is duly stamped and dated, and is free from erasures or alterations, except

as aforesaid, to register such bill or note in the County Court within whose jurisdiction the acceptor of the bill or maker of the note resides or carries on his business at the time such bill or note is dishonoured, and thereupon he shall be entitled to an order of such Court, in the form contained in Schedule (B) to this Act annexed marked No. 1, against the parties to the said bill or note, whether residing or carrying on business within the jurisdiction of the said County Court or not, whose names are written thereon, and execution shall proceed on this order against any such party, six days after service thereof on such party, in the same way, except as hereinafter provided, as if the party had been duly summoned to appear before the Court, and an order made against him, on affidavit of the service of such order, which affidavit shall be endorsed on such order or annexed thereto.

21. In any case where the sum due on the bill of exchange or promissory note on which such order for payment has issued shall exceed the sum of 20*l.*, exclusive of the costs of protest and registration, and service of the order, the clerk of the Court out of which such order has issued, at the request of the party who has obtained such order, and six days after the service of the same, shall issue under the seal of the Court a writ of *capias ad satisfaciendum* in the form contained in Schedule (B.) to this Act annexed marked No. 2, as a warrant of execution to the high bailiff of such Court, who by such warrant shall be empowered to take the party served with such order, and to deliver him to the governor or keeper of the common gaol wherein the debtors under judgment in execution of the Superior Courts of Justice may be confined for the county, city, borough, or place in which such party is resident: provided always, that where such writ of *capias ad satisfaciendum* shall have issued against any party who shall reside out of the jurisdiction of the Court, it shall be lawful for the high bailiff of the Court to send such writ to the clerk of any other County Court constituted under the Act passed in the 10th year of the reign of her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," within the jurisdiction of which such party shall then be or be believed to be, with a warrant thereto annexed, requiring execution of the same, in like manner as is done when a warrant of commitment is to be executed out of the jurisdiction of the Court from which the same has issued; and the clerk and high bailiff of the Court to which such writ of *capias ad satisfaciendum* is sent shall proceed in like manner as when a warrant of commitment is sent to such Court from another Court out of which such order had originally issued.

22. Any order for the payment of a bill of exchange or promissory issuing out of any County Court under this Act may be served in like manner as a summons issuing from such County Court is now served.

23. It shall be lawful for any party who has

been served with any order for the payment of a bill of exchange or promissory note issuing out of any County Court, at any time before execution has issued, or before any proceedings fully taken on such order, on notice to the holder of such bill of exchange or promissory note, to apply to the Judge out of whose Court the order issued to stay execution, which application must be supported by affidavits disclosing what would constitute a legal defence to an action on the bill or note against the party seeking to stay execution or by parol evidence to the like effect: provided always, that if the party served with such order shall be arrested on any *capias ad satisfaciendum* issued as hereinbefore provided on such order, it shall be lawful for him, at any time before he is discharged from custody, to apply to such Judge to stay or set aside such proceeding, and to discharge him from custody, and to stay all further execution, which application shall be supported by parol evidence or affidavit as aforesaid.

24. In any of these cases, if the Judge shall think that such legal defence has been disclosed, execution shall be stayed, or the party discharged from custody, and execution stayed (as the case may be), and an issue of some question of law or fact directed to be tried by the parties, in the same manner as in an ordinary plaint in the County Court, and in the proceedings on such issue the party seeking to stay execution shall be plaintiff and the holder of the bill or note defendant: provided always, that the proof of such issue shall rest on the party who would have been bound to prove it had such issue arisen in an ordinary plaint in such County Court brought by the holder of the bill or note.

25. Within six days after such issue has been directed or such further time as the Judge shall appoint, the party seeking to stay execution or to be discharged from custody shall give security for the payment of the bill or note, and interest thereon, and for the costs of protesting and registering the bill or note, and of the order and service of the same, and also for the costs of trying the issue directed by the Judge, or pay into Court a sum of money which shall be deemed sufficient by such Judge to abide the event of such issue, otherwise execution shall proceed as if no such issue had been directed: provided always, that the Judge may direct that such security shall not be required where the party applying for a stay of execution or discharge from custody can show to the satisfaction of the Judge, or upon affidavit, that his alleged signature to the bill or note has been forged, or that circumstances exist which affect the title of the holder with fraud, or that any other circumstances exist which in the opinion of the Judge ought to dispense with such security.

26. The costs of any proceedings in the County Court under this Act for the purpose of staying execution shall be in the discretion of the Judge, and on the same scale as in other proceedings within the jurisdiction of the Court.

27. After the trial of the issue directed by

the Judge of such County Court, where the matter in dispute between the parties is above 20*l.*, an appeal to one of the Superior Courts at Westminster shall be allowed where either party shall be dissatisfied with the determination or direction of the Judge on the trial of the said issue in point of law, or upon the admission or rejection of any evidence; provided that such appeal shall be in the same form, and subject to the same conditions and regulations as appeals which are now allowed by law in such County Court; provided also, that the said Court of Appeal may either order a new trial, on such terms as it thinks fit, or may order judgment to be entered for either party (as the case may be), and make such order with respect to the costs of the said appeal as such Court may think proper, and such order shall be final.

28. After the trial before the County Court Judge, if no notice of appeal be given, then, if the judgment or the verdict be for the plaintiff, the order for payment of the bill or note shall be discharged, and all proceedings on such order shall cease; and if the judgment or verdict be for the defendant, execution shall proceed, and costs be recovered as in ordinary plaints in the County Court: provided always, that if the plaintiff has been discharged from custody by order of the Judge, such discharge shall not be a satisfaction of the debt due by such plaintiff on the bill of exchange or promissory note on which the order for payment originally issued.

29. When either party appeals to one of the Superior Courts, execution in the County Court shall proceed, or not, according to the judgment of such Court of Appeal, or according to the result of any new trial ordered by such Court of Appeal.

30. No privilege shall be allowed to any attorney or solicitor, to exempt him from the provisions of this Act.

31. Any judgment or order obtained under this Act, and any execution issued or taken out thereon, against any bankrupt on any bill of exchange or promissory note drawn, accepted, made, or indorsed by such bankrupt within two months of the filing of a petition for adjudication of bankruptcy by or against such bankrupt shall be null and void to all intents and purposes whatsoever, whether such bill or note shall have been drawn, accepted, made, or endorsed by such bankrupt in contemplation of bankruptcy or not.

32. Nothing in this Act contained shall be construed or taken to interfere with or to affect any remedy which is now competent to the holder of or to any party to a bill of exchange or promissory note, at law or in equity.

33. It shall be lawful for the Judges of the Court of Queen's Bench, Common Pleas, and Exchequer, or any eight or more of them, of whom the Chiefs of each of the said Courts shall be three, from time to time to make all such general rules and orders for the effectual execution of this Act in the said Courts as in their judgment shall be necessary or

proper, and for fixing the costs to be allowed for and in respect of the matters herein contained, and for this purpose to meet from time to time as occasion may require; and all such rules or orders shall be laid before both Houses of Parliament, if Parliament be then sitting, immediately upon the meeting of the same, or if Parliament be not sitting, then within five days after the next meeting thereof; and no such rule or order shall have effect until six weeks after the same shall have been so laid before both Houses of Parliament; and any rule or order so made shall, from and after the expiration of such time aforesaid, be of the same force and effect as if the same had been enacted by authority of Parliament: provided always, that it shall be lawful for the Judges in each of the said Courts from time to time to make such rules and orders for the government and conduct of the ministers and officers of their respective Courts, in and relating to the performance of the duties and business to be done and performed in the execution of this Act, as such Judges may think fit and reasonable.

14. Such new or altered writs and forms of proceedings may be issued, entered, and taken in the said Courts as may by the Judges of the said Courts, or any eight or more of them, of whom the Chiefs of the said Courts shall be three, be deemed necessary or expedient, for giving effect to the provisions hereinbefore contained, and in such forms as the Judges of such Courts respectively shall from time to time think fit to order; and such writs and proceedings shall be acted on and enforced in such and the same manner as writs and proceedings of the said Courts are now acted on and enforced, or as near thereto as the circumstances of the case will admit; and any existing writ or proceeding the form of which shall be in any manner altered in pursuance of this Act shall nevertheless be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied by this Act.

25. It shall be lawful for the Lord Chancellor to appoint and authorise five of the Judges of the Courts holden under the Act passed in the 10th year of her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," to frame such general rules and orders for the effectual execution of this Act, in the said Courts as in their judgment shall be necessary and proper; and all such rules and orders as aforesaid as shall be certified to the Lord Chancellor under the hands of the Judges so appointed shall be submitted by the Lord Chancellor to three or more of the Judges of the Superior Courts of Common Law at Westminster, of whom the Chief Justice of the Court of Queen's Bench or Common Pleas or the Chief Baron of the Court of Exchequer shall be one; and such Judges of the Superior Courts may approve or disallow or alter or amend such rules and orders, or any of them; and such of the rules as shall be so approved by such Judges of the Superior

Courts shall forthwith after the approval thereof be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not sitting, then within five days after the next meeting thereof; and no such rule or order shall have effect until six weeks after the same shall have been so laid before both Houses of Parliament; and any rule or order so approved shall from and after the expiration of such time as last aforesaid be of the same force and effect as if the same had been enacted by authority of Parliament.

36. Any affidavit for the purpose of proving service of any order for the payment of a dishonoured bill of exchange or promissory note issued under this Act against any person residing in any part of her Majesty's dominions except England, or for the purpose of making any application to the Court out of which such order issued, may, in any part of her Majesty's dominions except England, be sworn before a magistrate or justice of the peace for the county, city, town, or place where any such affidavit shall be sworn; and every affidavit so sworn by virtue of this Act may be used and shall be admitted in evidence, saving all just exceptions, provided it purport to be signed by such magistrate: provided always, that if any person shall forge the signature of any such affidavit, or shall use or tender in evidence any such affidavit with a false or counterfeit signature thereto, knowing the same to be false and counterfeit, he shall be guilty of felony, and shall upon conviction be liable to imprisonment for any term not exceeding three years nor less than one year, with hard labour; and every person who shall be charged with committing any such offence, and every accessory before or after the fact to any such offence, may be prosecuted for such offence in any Court of competent jurisdiction in that part of her Majesty's dominions in which such offence shall have been committed, or in that part of her Majesty's dominions in which such person shall be apprehended or be in custody: Provided also, that if any person shall wilfully or corruptly make a false affidavit before such magistrate, every person so offending shall be deemed and taken to be guilty of perjury, in like manner as if such person had wilfully and corruptly made such false affidavit in England before competent authority, and shall be liable to be prosecuted for such perjury in any Court of competent jurisdiction in that part of her Majesty's dominions in which such offence shall have been committed, or in that part of her Majesty's dominions in which such person shall be apprehended or be in custody.

37. Any affidavit for the purpose of proving service of any order for the payment of any dishonoured bill of exchange or promissory note, issued under this Act against any person residing out of her Majesty's dominions, or service of notice of such order, or for the purpose of making any application to the Court out of which such order issued, may be sworn before any consul-general, consul, vice-consul, or consular agent for the time being appointed

by her Majesty at any foreign port or place; and every affidavit so sworn by virtue of this Act may be used and shall be admitted in evidence, saving all just exceptions, provided it purport to be signed by such consul-general, consul, vice-consul, or consular agent: provided always, that if any person shall forge the signature of any such affidavit, or shall use or tender in evidence any such affidavit with a false or counterfeit signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to imprisonment for any term not exceeding three years nor less than one year, with hard labour; and every person who shall be charged with committing any such felony may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in the county or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in any county, or place in which the principal offender may be tried: provided also, that if any person shall wilfully and corruptly make a false affidavit before such consul-general, consul, vice-consul, or consular agent, every person so offending shall be deemed and taken to be guilty of perjury, in like manner as if such person had wilfully and corruptly made such false affidavit in England before competent authority, and shall and may be dealt with, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in any county or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that county or place.

OBSERVATIONS ON THE BILLS OF EXCHANGE BILL.

THE following Observations, explanatory of the objects of this measure have been printed with the papers of the House of Lords:—

“The object of this Bill will be best understood by a brief explanation of the Scottish system of summary diligence on dishonoured bills of exchange and promissory notes, which it proposes to introduce into England, and by a statement of some of the advantages which are found to arise under that system.

“Summary diligence on foreign bills of exchange was first introduced into Scotland by an Act of the Scottish Parliament in the year 1681, and was afterwards extended, by an Act passed in 1696, to inland bills. Under these Acts it was only allowed against drawers and indorsers in the case of non-acceptance, the acceptor alone being liable to this proceeding in the case of non-payment. By the 12 Geo. 3, c. 72, summary diligence was allowed to proceed against drawers and indorsers as well as

against acceptors in the latter case; and by the same Act it is allowed on promissory notes in the same way as on bills of exchange.

“Under these Acts a notarial protest of a dishonoured bill or note, when registered in the books of certain Courts, becomes in effect a judgment against any of the parties whose names may be on the bill or note, and an extract is granted to the holder so registering the protest, containing a warrant of the Court for execution against the party from whom payment is sought, on the expiration of six days after he has been duly served with notice according to the Law of Scotland; therefore a party who puts his name to a bill of exchange or promissory note is considered as giving a warrant to any *bond fide* holder to sign judgment against him, in the event of the note or bill being dishonoured.

“There are various restrictions, however, to the right which the holder of a bill or note thus acquires, some of which it may be proper to mention. The protest cannot be registered after six months from the time the bill or note becomes due. The bill or note must be good on the face of it, and free from erasures or alterations in *substantialibus*. Summary diligence is not competent on bills or notes, which, though the party's name be inserted by himself in the body of them, are not subscribed by him, or which are subscribed only by initials or by a mark. And there are various other restrictions on the right of the holder for the protection of the debtor, which it is unnecessary here to detail. But the great restriction on the right of the holder arises from the power which the party from whom payment is sought by the process of summary diligence has, of coming forward at any time before execution is completed, and staying execution by what is termed “a suspension.” In this proceeding any grounds will be available for the latter party which would form a defence to an action against him on the bill or note, and the effect of his being successful is to discharge his liability. There are other objections which may be urged as grounds of suspension of summary diligence, although they could not be brought forward in answer to an action.

“On the other hand, the right of suspension itself is placed under very stringent conditions. The first step to be taken by the debtor for obtaining a suspension of execution is by preferring a bill or short petition to the Lord Ordinary on the bills, if the protest has been registered in the Courts of Session, or to the sheriff, if it has been registered in the Sheriff Court. The Judge to whom the application is made examines with all possible despatch, either before or after hearing the holder, whether the debtor has alleged sufficient *prima facie* grounds for staying execution; and if they are such as would be incompetent in law, the petition is at once dismissed. When the grounds, however, are such as, if proved, would entitle the debtor to resist payment, the prayer of the petition is granted, and execution is stayed till the grounds of suspension are

discussed, in which both parties are allowed an opportunity of deliberately making good their pleas and averments; and upon the proof and argument thus submitted, the Court finally determines whether execution is to issue or not. But in general no suspension is granted without security given by the party applying for it, to pay the debt, if it shall be found due, and the costs of suit. The bond into which the sureties are required to enter becomes, if the holder is successful in the suit, a warrant for instant execution against the sureties.

"In the proceedings in suspension the debtor is placed in the position of a plaintiff, and must take on himself the burden of instituting the process and of proving his case. The law presumes that the holder has a just title to the bill, and that it is a regular instrument when *ex facie* correct, and he is therefore entitled to stand on its merits until the debtor has made out a sufficient case to call on him for proof.

"It cannot be questioned that the principle applied by the Law of Scotland to bills of exchange and promissory notes is in accordance with the sound mercantile view of such documents. According to the custom of merchants, they are not treated as mere contracts for the payment of money, enforceable only by action, in which the *onus probandi* on every point, except the consideration, rests with the holder, but as securities which are certainly to be paid when due, if the parties liable remain in solvent circumstances. Accordingly, when the names of the parties to bills of exchange are known, and their credit perfectly ascertained, these documents circulate as money; and the only point considered by the most prudent merchant in receiving a bill in payment of a debt is, whether the credit of the parties is satisfactory. A man who puts his name to a bill as drawer, indorser, or acceptor, is understood in the mercantile world to do so advisedly, and pledging his credit to the fullest extent that he will pay it in certain circumstances. The principle of the system of summary diligence is, that when these circumstances have arisen and are undeniable, the holder is entitled to enforce payment by a speedy legal process, unless the party held liable in the bill can show that the instrument is not what it professes to be, and either that it does not possess the character which he vouched for by his signature, or has, since he put his name to it, acquired a new character which frees him from the obligation to pay which would else be incumbent on him.

"The advantages of the system of summary diligence, in the opinion both of Scottish lawyers and mercantile men, are great and unquestionable. It has now been in existence for more than a century and a half, and its beneficial operation has been proved by the most satisfactory evidence. Under it the commerce of Scotland has increased and strengthened with a rapidity and steadiness which is scarcely to be paralleled in the annals of any other modern nation. How much of this has

been owing to political causes, it is unnecessary to inquire; but the fact is unquestionable that a system which bears directly on credit, has been found contemporaneous with one of the most astonishing developments of trade which has been recorded in history.

"One obvious consequence of the system is, that defences pleaded for the mere purpose of delay and embarrassment, which are too common in the English Courts in actions on bills of exchange, and which render legal proceedings the last resource of a prudent merchant, are seldom raised in the Scottish tribunals.

Questions on important points of Law, from the very nature of commercial dealings, do arise; but time and money are not wasted on subtle points of special pleading, nor in defeating the sham defences of an opponent. Another consequence is no less clear. A dishonoured Scotch bill of exchange becomes of considerably higher value to the holder than an English one. Its payment can be enforced by a much less dilatory and expensive machinery; and when the holder knows, as he ought to do, the true nature and character of the instrument in his possession, he is not afraid to put that machinery in motion. He knows that mere dilatory proceedings will be of no avail to prevent the enforcement of his just rights; and he has no fear that the final result of any proceedings which shall take place, may end in a judgment against an insolvent, since a surety must be interposed whose ability to pay he has the means of stringently testing. But there is a further consequence still which results with equal certainty from this system. If the party liable on the bill be in insolvent circumstances when it is protested and registered, he is deprived of the means of putting off the evil day, and of going further and further into a hopeless condition. Should execution proceed against him without his attempting to stay it, the true state of his affairs becomes apparent; and even where he applies for a suspension of proceedings, he must provide sureties whose own solvency is closely scrutinized, who must render themselves liable for the debt, interest, and costs. This for a man verging on insolvency is no easy matter to accomplish; and the system, therefore, supplies a most efficient and searching test of insolvency, and affords one of the best securities which legislation has yet devised for mercantile credit. Nor can it be said that the system is too stringent, and must tend to check legitimate credit. It is the universal opinion of Scottish merchants that it has no such effect, and that it has operated most beneficially on the trade of that part of the United Kingdom. It is impossible indeed, on a fair consideration of the commercial condition of that country, to entertain any reasonable apprehension that the system has the slightest tendency to prevent legitimate speculation, or to damp the spirit of enterprise.

Such being the nature of the Scottish system of summary diligence on dishonoured Bills

of Exchange, and such some of the advantages resulting from it, this Bill proposes to introduce the system into England in so far as may be compatible with the machinery of our Courts of Law.

All that is required for introducing the system into England in its essential features, is to give to the registration of the protest of a dishonoured Bill the effect of a judgment, and then to make provision for attempts to stay execution, and this Bill seeks to accomplish this object in the following manner:—

A protest is assumed as the foundation of the proceeding, not only because this method prevails in Scotland, but because the dishonour of the bill could not be proved in any more simple and economical mode. In each of the superior Courts of Common Law, one of the Masters would be appointed as the registrar of protested Bills, and would keep a book for this purpose. Every holder of a dishonoured Bill, within six months after protesting it, would be permitted to register the bill and protest in the register of any of the Superior Courts, and would thereupon be entitled to judgment and to an order of the Court against any of the parties to the bill, for payment of the same with six days after the service of the order; and upon the expiration of six days after such service, execution might proceed. The order would be served in the same way as a Writ of Summons under the Common Law Procedure Act; and where the party sought to be served avoided service, the Court or a Judge would allow the holder to proceed as if service had been effected; where the party sought to be charged on the bill resided abroad, application for an order would be made to a Judge, who would allow a longer time after service before execution should issue. Before execution had taken place, it would be lawful for the party who had been served with the order to apply to the Court or a Judge to stay execution; and it would be necessary that the application should be supported by satisfactory affidavits, which the other party would be allowed to answer if he thought proper. The Court or Judge would then determine whether sufficient grounds had been laid for staying execution. If they thought so, then an issue in fact or in law would be directed to be tried by the parties, in the same way at if agreed on under the Common Law Procedure Act, and in which the party seeking to stay execution would be plaintiff, and the holder of the bill defendant. Within six days after the order directing an issue, the party seeking to stay execution would be required to give security for principal and interest on the bill, and for the costs of trying the issue, unless dispensed with by the Judge; otherwise, execution to proceed. The costs would be in the discretion of the Court. On the trial of the issue in fact or in law, if the verdict or judgment were for the plaintiff, the order for execution would be discharged on application, within a certain time, to the Court; if for the defendant, immediate execution on the bill might be ordered;

or, if not so ordered, execution would proceed at the time at which it would be allowed to do so in an ordinary action, where judgment must be signed for damages and costs.

The benefits of the system, however, would be imperfectly realised if it were confined to the superior Courts. In Scotland, the local jurisdiction of the Sheriff Courts is the same as the general jurisdiction of the Court of Session in summary diligence; and, considering the advantages of local registers, the County Courts in England ought to be placed on the same footing so far as their jurisdiction extends. These Courts have already jurisdiction in cases of contract up to 50*l.*, and there is no substantial reason why their jurisdiction in summary execution on bills and notes ought not to be to the same extent.

It is therefore provided that the chief Clerk of every County Court shall be, by virtue of his office, a registrar of protested bills, and shall keep a register for this purpose. Every holder of a dishonoured bill for the payment of any sum not exceeding 50*l.*, within six months after protesting it, would be permitted to register it in the County Court within whose jurisdiction the acceptor resides; and thereupon he would be entitled to an order of the Court against any of the parties to the bill, and on this execution would proceed six days after service, in the same way as if the party had been duly summoned to appear before the Court, and an order made against him. The order would be served as summonses from the County Court now are. Before execution, the party served with the order might obtain from the Court a summons for staying execution, and at the hearing the Judge would either dismiss the summons or order a trial, in which the party seeking to stay execution would be plaintiff, and the holder defendant. The same provision with regard to security for principal and interest and costs are made as in the superior Courts. Within six days after trial, where the matter in dispute between the parties amounts to 20*l.*, an appeal would be allowed. If no appeal were made, then, where the Judgment of the Court was for the plaintiff, the order for execution would be discharged; and where for the defendant, execution would proceed, and costs be recovered in the ordinary way; where there was an appeal, execution would proceed or not, according to the judgment, as in other cases.

[We presume the proposed jurisdiction to be conferred on the County Courts on dishonoured bills not exceeding 50*l.*, would be *concurrently* with the Superior Court, not exclusively. *Ed.*]

REGISTRATION OF BILLS OF SALE.

THIS Bill, "For preventing Frauds upon Creditors, by secret Bills of Sale of Personal Chattels," recites, that frauds are frequently

committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors; and proposes to enact—

1. That from and after the passing of this Act every bill of sale of personal chattels made by any person, who according to the Bankrupt Laws is to be deemed liable to become bankrupt, either absolutely or conditionally, or subject or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of such bill of sale, or at any future time, to seize or take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed or therein referred to, or a true copy thereof, and of every attestation of the execution thereof, shall, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person making or giving the same, and of every attesting witness thereto, be filed with the officer acting as clerk of the dockets and judgments in the Court of Queen's Bench, within 21 days after the making or giving of such bills of sale (in like manner as a warrant of attorney in any personal action given by a trader is now by law required to be filed), otherwise such bill of sale shall, as against all assignees of the estate and effects of the person making or giving the same under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against all sheriff's officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process of any Court of Law or Equity, or every person on whose behalf such process shall have been issued, be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale, which at the time of such bankruptcy, or of filing the insolvent's petition in such insolvency, or the execution by the debtor of such assignment for the benefit of his creditors, or at the time of the issuing of such process (as the case may be), shall be in the possession, or apparent possession, of the person making or giving such bill of sale, after the expiration of such period of 21 days.

2. If such bill of sale shall be made or given subject to any defeazance or condition, or declaration of trust not contained in the body thereof, such defeazance or condition or declaration of trust, shall, for the purposes of this Act, be taken as part of such bill of sale, and shall be written on the same paper or parch-

ment on which such bill of sale shall be written, before the time when the same or a copy thereof respectively, shall be filed, otherwise such bill of sale shall be null and void to all intents and purposes as against the same persons, and as regards the same property and effects, as if such bill of sale, or a copy thereof, had not been filed according to the provisions of this Act.

3. The said officer of the said Court of Queen's Bench shall cause every bill of sale, and every such schedule and inventory as aforesaid, and every such copy filed in his said office under the provisions of this Act, to be numbered, and shall keep a book or books in his said office, in which he shall cause to be fairly entered an alphabetical list of every such bill of sale, containing therein the name, addition, and description of the person making or giving the same; and also of the person to whom or in whose favour the same shall have been given, together with the number and the dates of the execution and filing of the same, and the sum for which the same has been given, and the time or times (if any) when the same is thereby made payable, according to the form contained in the Schedule to this Act, which said book or books, and every bill of sale, or copy thereof, filed in the said office, may be searched and viewed by all persons, at all reasonable times, paying to the officer for every search against one person the sum of 6d. and no more. And that in addition to the last-mentioned book, the said officer of the said Court of Queen's Bench, shall keep another book or index, in which he shall cause to be fairly inserted, as and when such bills of sale are filed in manner aforesaid, the name, addition, and description of the persons making or giving the same; and also of the persons to whom or in whose favour the same shall have been given, but containing no further particulars thereof; which last-mentioned book or index, all persons shall be permitted to search for themselves, paying to the officer for such search the sum of 1s.

4. The said officer shall be entitled to receive for his trouble, in filing and entering every such bill of sale, or a copy thereof, as aforesaid, the sum of 1s. and no more.

5. Any person shall be entitled to have an office copy, or an extract, of every bill of sale, or of the copy thereof filed as aforesaid, upon paying for the same, at the like rate as for office copies of judgments in the said Court of Queen's Bench.

4. Any Judge of the said Court of Queen's Bench may order a memorandum of satisfaction to be written upon any bill of sale, or copy thereof respectively, as aforesaid, if it shall appear to him that the debt (if any) for which such bill of sale is given as security, shall have been satisfied or discharged.

[This appears to be a useful measure, and properly worked out in practice.—ED.]

THE NEW LAW COURTS.

THE Lord Chancellor presented a petition from the Managing Committee of the Metropolitan and Provincial Law Association, praying for a removal of the Courts of Law from Westminster and Guildhall to new buildings in the immediate vicinity of the Inns of Court. According to the report in the newspapers, the noble and learned Lord remarked that, in his opinion, the inconvenience arising from the *dispersion of the Inns of Court*¹ was somewhat overstated; but apart from that, he did not see how the prayer of the petition could be complied with until they found their way to the funds necessary for providing new buildings for the Law Courts. The Suitors' Fund, which had been suggested, had so many charges fixed upon it by Act of Parliament, and the fees had been so reduced that it was almost doubtful whether the balance would continue to be sufficient to pay the expenses of the Court, and certainly it was not likely that there could be for some time to come any surplus available for the erection of new Law Courts.

So far the report of the Lord Chancellor's observations. When the Accountant-General's annual account is laid before Parliament (which it should have been several weeks ago), we shall probably see that the *surplus fund* is ample for the proposed purpose. The dead fund is *four millions*. Of this it is just possible (though highly improbable) that one-half may be claimed. There is, at least, a million and a quarter which cannot be claimed, because the surplus interest (or interest upon interest) amounts to that sum. We are aware that there are charges both on the Suitors' Fund and the Fee Fund, and we dispute not that these prior charges must be satisfied; but there is enough and to spare for the New Courts, after discharging every possible existing incumbrance.

NOTES ON RECENT STATUTES.

EQUITY JURISDICTION IMPROVEMENT ACT.

ORDER, UNDER S. 52, TO REVIVE ON DEATH OF A DEFENDANT.

In a claim by a simple contract creditor of a testator against his executrix and heir-at-law, a reference to take accounts was made, and the Master's report thereon was confirmed. An

¹ The report in this respect is palpably inaccurate. His Lordship could not have referred to the *dispersion* of the Inns of Court; they are sufficiently concentrated. The Profession only want to bring the Westminster Courts into the midst of the Inns of Court.

order was then made on further directions for a sale, but before it could be carried into effect, the heir-at-law died, having by his will devised *inter alia* the estate in question, and directing the payment of a legacy thereout to his executor. The plaintiff then obtained an order under the 15 & 16 Vict. c. 86, s. 52, to revive the suit against the devisee and the executor of such heir-at-law. On the question being raised, whether the case was within the Statute, Vice-Chancellor Stuart said, "the 52nd section applies to every case, where it is sought to bring before the Court parties whose presence has become necessary by reason of any transmission of interest or liability. It must, however, be borne in mind, that the order is obtained *ex parte*, and is always liable to be discharged by those against whom it has been improperly obtained." *Lowe v. Watson*, 1 Smale & Giffard, 123.

ORDER, UNDER S. 44, FOR PROSECUTION OF SUIT WITHOUT REPRESENTATIVE OF DECEASED DEFENDANT.

After an order in a claim by a residuary legatee against the two executors, who were also residuary legatees, for an account and the administration of the estate, one of the executors who had not proved or acted in the trusts, died intestate and without any legal personal representative, and without being possessed of any property at the time of his death.

An order was made, under the 15 & 16 Vict. c. 86, s. 44, that the suit should proceed without making the legal personal representative of the deceased defendant a party, and that the inquiries and accounts directed by the order on the claim should be prosecuted and taken in like manner as if the representative had been served with a writ of summons and had entered an appearance. *Rogers v. Jones*, 1 Smale & G. 17.

LAW OF ATTORNEYS AND SOLICITORS.

TAXATION OF BILLS OF COSTS AFTER JUDGMENT BY DEFAULT IN ACTION FOR SAME.—SPECIAL CIRCUMSTANCES.

An action of debt had been brought by a solicitor to recover the amount of three bills of costs, and after various proceedings judgment by default was signed, the defendant having withdrawn all his pleas, and an application to a Common Law Judge for a taxation had been refused on the ground of want of jurisdiction after final judgment. A special petition for a

taxation was then presented on the ground of excessive and improper charges, and it appeared that two of the bills had been delivered more than twelve months, and the third within the year.

The *Master of the Rolls* directed a taxation of the third bill, and said his impression was that a judgment by default in an action brought in such a form that the amount due could not be ascertained by a writ of inquiry, would not preclude a taxation, provided the Court saw that there were sufficient special circumstances to entitle the client to such an order. But on appeal held by Lord Justice Cranworth, that the matter having been already adjudicated on by a Court of co-ordinate jurisdiction could not be re-opened here; and further, that after final judgment at law, the matter being *res judicata*, there could be no taxation under the statute. *In re Barnard*, 16 Beav. 5.

JURISDICTION OF COUNTY COURTS.

PLAINT WHERE TITLE TO OFFICE OF PARISH CLERK QUESTIONED.

Held, that the office of chapel clerk of a parochial chapelry is a "*hereditament*," within the meaning of the 9 & 10 Vict. c. 95, s. 58, and that the trial of the title to such an office is excluded from the jurisdiction of the County Court Judge. *Stephenson v. Raine*, 2 Ellis & B. 744.

TRIAL OF QUESTION OF DEVASTAVIT.

Held, that the Judge of the County Court has jurisdiction under the 9 & 10 Vict. c. 95, s. 65, as extended by the 13 & 14 Vict. c. 61, s. 1, to try a question of *devastavit*. *Winch v. Winch*, 13 Com. B. 128.

LAW LIFE ASSURANCE SOCIETY.

THE following statement of accounts for the year ending 31st December, 1853, shows the prosperous condition of this Society;—

Balance on 31st Dec. 1852, of	
Guarantee Fund	£ 457,229
Balance on 31st Dec. 1852, of	
Assurance Fund	3,507,501

Total balance on 31st Dec. 1852, £3,964,730

Received during the Year.

New Premiums	£ 11,990
Renewal Premiums	301,325
Profit and Loss	92,429
	<hr/>
	405,744
	<hr/>
	£4,370,474

Paid during the Year.

Claims on Death	£169,717
Claims on Bonuses	43,447
Surrenders	6,528
Charges of Management	5,642
	<hr/>
	225,334

Total balance, on 31st Dec. 1853. £4,144,940

Of this sum 457,229*l.* form the Proprietors' Guarantee Fund, and 3,687,711*l.* form the Assurance Fund.

The whole being invested in Government or Real Securities.

Since its establishment in 1823, the Society has paid upon the deaths of parties whose lives were assured upwards of 3,000,000*l.* sterling, of which sum nearly 500,000*l.* was on account of bonuses added to the policies.

Three divisions of profits have been made, and reversionary bonuses, amounting to 1,929,085*l.* have been added to the several policies.

Assurances are effected by this Society to the extent of 5,000*l.*, upon the same sole or joint or surviving life or lives, and are not confined to the Profession of the Law, but are open to persons in every station of life.

Four-fifths of the profits made by this Society are appropriated to the persons assured for the whole term of life.

At the end of every seventh year the profits divisible amongst the assured, are apportioned amongst such of the assured for the whole term of life, as shall have been so assured for the space of three years or upwards, next previous to the date of division, subject only to the reservation of such a sum of money as the directors shall deem necessary to be carried forward, to the period of the next septennial division, for the benefit of the assured. For the amounts so apportioned, equivalent reversionary sums are to be added to the respective policies of those entitled.

The next division of profits will be made up to 31st Dec. 1854.

INNS OF COURT.

PROSPECTUS OF LECTURES.

Constitutional Law and Legal History.

THE public Lectures to be delivered by the Reader on Constitutional Law and Legal History will comprise the following subjects:—

Rise and Progress of Written Law—Character of the Early Writers on English Law—Glauville and Bracton—Progress of Law during the reign of Henry II.—Causes of Magna Charta—Motives of the Tumults and Disturbances which took place during the reigns of Henry II., John, and Henry III.—Value of Matthew Paris—Contrast between French and English History; between the Resistance of the French and English Vassal—Rights of the People and of Foreign Mer-

chants incorporated with Magna Charta—Lord Coke's Commentary upon "Omnis Liber Homo"—Gradual Progress of the English Constitution—Character of the Times of Charles the First and Charles the Second.

In his private Lectures the reader will pursue the History of England from the Time of Charles the First to the Revolution. He will endeavour to illustrate the subject by reference to the Law of other countries, and the writers on the Law of Nations.

The following books are referred to:—

Millar, Const. Hist.; Creasy on the English Constitution; Sullivan's Lectures; Brodie's Const. History; Hallam, Const. History, and Chapter on Middle Ages; State Trials; Statute Book; Parliamentary History; Rapin; May; Clarendon.

The Reader on Constitutional Law and Legal History will deliver his public Lectures at Lincoln's Inn Hall, on Wednesday in each week (the first Lecture to be delivered on the 19th April), commencing at 2 P.M. The Reader will receive his private Classes on Tuesday, Thursday, and Saturday mornings, from half-past 9 to half-past 11 o'clock, in the Benchers' Reading Room, at Lincoln's Inn Hall.

Equity.

The Reader on Equity proposes to deliver a course of Twelve Lectures on the Jurisdiction exercised by the Court of Chancery, in consequence of the Rules of Procedure adopted by the Courts of Common Law not permitting them to administer justice efficiently in certain cases—On the Advantages and Disadvantages attending the Systems of Procedure in Common Law and Equity—On the Proposal to Amalgamate the Equitable with the Legal Jurisdiction—And on the Present Course of Practice in the Court of Chancery.

In addition to the public Lectures, it is proposed that two Classes shall be formed, as during the preceeding Terms for the study of the Principles and Practice adopted by Courts of Equity; each class to meet for one hour three times a week. The Junior Class will read *Smith's Manual of Equity Jurisprudence*, commencing with the chapter on "Mortgages, Pledges, and Liens;" and portions of *Spence on the Equitable Jurisdiction of the Court of Chancery*, vol. i.

The Senior Class will read *Story's Commentaries on Equity Jurisprudence*, vol. ii., commencing with the chapter on "Election and Satisfaction"—*White and Tudor's Leading Cases*, vol. ii., commencing with "*Stapilton v. Stapilton*"—*Mitford's Pleading in Chancery*, commencing with the Chapter on Pleas. Each Student will be expected, in the intervals between the meetings of the Class, to peruse portions of these and other works pointed out by the Reader, and to be prepared, at the ensuing meeting of the Class, to answer and discuss questions arising out of the subjects of their reading.

The Reader on Equity will deliver his public

Lectures at Lincoln's Inn Hall on Thursday in each week during the Educational Term, commencing at two o'clock P.M. (the first Lecture to be delivered on the 20th of April). The Reader will receive his private Classes on Monday, Wednesday, and Friday evenings, from seven to nine o'clock, in the Benchers' Reading Room at Lincoln's Inn Hall.

Law of Real Property.

The Reader on the Law of Real Property, &c., proposes to deliver in the ensuing Educational Term, a course of 12 Public Lectures on the following subjects:—

1. The General Rules of Construction applicable to Deeds and Wills, with reference to—Mistake—Falsa Demonstratio non Nocet—Verbal Alterations and Transpositions—Admission of Extrinsic Evidence.

2. Voluntary Settlements;—13 Eliz. c. 5; 27 Elis. c. 4.

3. The Creation and Delegation of Powers of Sale given to Fiduciary Vendors.

4. The Liability of Purchasers to see to the Application of their Purchase-money.

5. The Law of Judgments, so far as they affect Real Estates;—1 & 2 Vict. c. 110; 2 & 3 Vict. c. 11.

6. The Law of Covenants, with reference to the Law of Vendor and Purchaser.

The Lectures to be delivered to the Private Classes will comprise the following subjects:—With the Senior Class, the text of *Sugden on Powers*, commencing at vol. i., p. 439, will form the basis of the Lectures; and the latest decisions, illustrating the principles there laid down, will be examined and commented upon. With the Junior Class, the subject of the Lectures will be *The Real Property Statutes and The Rule in Shelly's Case*.

The Public Lectures will be delivered at Gray's Inn Hall, on Friday in each week, at 2 P. M. (the first Lecture to be delivered on the 21st of April). The Private Classes will be held in the North Library of Gray's Inn, on Monday, Wednesday, and Friday mornings, from a quarter to 12 to a quarter to 2 o'clock.

Jurisprudence and the Civil Law.

The Reader on Jurisprudence and the Civil Law will, in the course of the ensuing Educational Term, deliver Twelve Public Lectures on the following subjects:—

1. On *Obligation and Contract*—On the Nature of Obligations, and their place in General Jurisprudence—On the Roman Theory of Obligation, and the mode in which it has been interpreted by Pothier and others—On the Necessary Elements of Contract, and on the manner in which they are discriminated by the Roman Jurists and by English Law—On *Policitations, Conventions, and Pacts*, and on some disputed Questions connected with the *Pactum Nudum*—On the Classification of Con-

tracts—On some particular Forms of Contract, and more especially on the Contract of Sale.

2. On *Prescriptions*—On Usucapion, and on some Peculiarities in the Ancient Views of Proprietary Right—On the Connection between Possession and Prescription, and Savigny's Theory of Possession—On the Nature and Criteria of a True Prescription, and on the extent to which such Prescriptions are admitted in English and Roman Jurisprudence, and in certain Continental Systems of Law.

3. On *Testamentary Jurisprudence*—On some current Theories respecting the Origin of the Testamentary Power—On Universal Successions; on the manner in which the Conception of a Universal Succession appears to have been originally formed, and on its importance as a Key to Testamentary Jurisprudence—On the Principal Rules of the Roman Law of Testaments, and on the Modifications and Distortions which those Rules have undergone in Modern Law—On the *Jus Accrescendi*; its Ancient and Modern History—On Substitutions, and their Connection with Entails—On Legacies and Fidei-commissa.

4. On the *Doctrines of Roman Law*, regarding Conditions, Good Faith, Negligence, and Fraud.

With his Private Classes, the Reader proposes to read the *Institutiones Juris Romani Privati* of Warnkönig, and afterwards the Commentaries of the same writer or some other Compendium of *Pandect-Law*.

The following works will also be incidentally referred to at the Public or Private Lectures, and portions of them recommended for perusal:—Dumont's *Bentham*, Austin's "Province of Jurisprudence determined," the *Esprit des Lois*, the *Droit Civil* of Tollier, the *Doctrina Juris Philosophica* of Warnkönig, the *Histoire du Droit* of Lermier, the *Innere Geschichte des Römischen Rechts* and the *Aussere Geschichte des R. R.* of Tigerstrom, the *Explication Historique des Instituts* of Ortolan, Wheaton's "Elements of International Law," the *Droit International Privé* of Fœlix, and Story's "Conflict of Laws."

The Public Lectures will be delivered in the Hall of the Middle Temple on Tuesday in each week, at 2 P.M. (the first Lecture of the course on Tuesday, April 25th).

The Private Classes will assemble at the Class-room in Garden Court on Monday, Wednesday, and Friday mornings, at half-past 9 o'clock.

Common Law.

The Reader on Common Law proposes to deliver during the Educational Term, commencing the 15th April, 1854, Twelve Public Lectures, the Subjects to be treated of in which will be as under:—

On Mercantile Law.

Lecture 1. Inquiry as to the Origin and Progress of Mercantile Law in this Country; Specification of the principal Matters to which it applies itself.

Lecture 2. The Statute of Frauds; considered in relation to its effect upon Mercantile Transactions.

Lectures 3 and 4. Of Negotiable Instruments; their peculiar Nature and Attributes.

Lecture 5. On the Admissibility of Evidence of Custom, or Usage, to explain Written Instruments.

Lecture 6. Of the True Measure of Damages in Actions founded upon Contract.

On Criminal Law.

Lecture 1. Inquiry respecting the Elementary Principles of Criminal Jurisprudence, and the Object proposed in the Punishment of Crime.

Lecture 2. Of Indictable Offences generally; Distinction between Wrongs Indictable and Actionable; of Offences punishable on Summary Conviction.

Lectures 3 and 4. Of some of the more common Offences against the Person and Property.

Lecture 5. Examination of the Rules of Evidence ordinarily applicable in Criminal Cases.

Lecture 6. On the Writ of Habeas Corpus.

With his Private Class the Reader on Common Law will traverse the ground indicated in the above Prospectus, calling attention more especially to such matters, falling within the scope of his inquiries, as are of real practical importance. The Books to be used with the Private Class will be:—*Smith's Mercantile Law*, 4th ed.; *Story on Agency*, 4th ed.; *Byles on Bills*; *Sedgwick on the Measure of Damages*; *Archbold's Criminal Pleading* (Ed. by Welsby); *Lord Campbell's Acts* (Ed. by Greaves); and *Blackstone's Commentaries*, vol. 4.

The Public Lectures on Common Law during the ensuing Term will be delivered, and the Private Classes will meet in the Hall of the Inner Temple as under:—

The Public Lecture on Monday in each week, at 2 P.M.; the first Lecture to be delivered on Monday, April 24.

The Private Class on Tuesday, Thursday, and Saturday mornings from a quarter to 12 to a quarter to 2 o'clock.

By order of the Council.

(Signed)

EDWARD RYAN,
Chairman (pro tem).

Council Chamber, Lincoln's Inn,
23rd March, 1854.

Note.—The Educational Term commences on the 15th April, and ends on the 30th July, 1854.

The several Readers will receive their respective Classes on the appointed days, commencing Wednesday, the 19th April.

The Lectures and Classes will be suspended after Thursday the 11th May, to be resumed on and after Monday the 29th May.

SELECTIONS FROM CORRESPONDENCE.

RANK OF CERTIFICATED CONVEYANCERS.

What is the difference between the standing of a solicitor and a conveyancer? A London barrister lately told me that he considered the conveyancing branch of the Profession took precedence far before Common Law, and that barristers sometimes practised as conveyancers.

A SUBSCRIBER.

[Amongst the members of the Bar, it is clear that they rank according to the dates of call to the Bar, until promoted as serjeants or Queen's counsel; and whether practising in the Conveyancing branch of the Profession, or at Common Law, or in Equity, the standing of barristers is not affected.]

As to conveyancers practising under the Bar, and taking out their annual certificates, we think they are not entitled to any precedence over solicitors in Chancery or attorneys-at-law.—ED.]

LAW UNION INSURANCE SOCIETY.

Admiring the principle of the proposed Assurance Office, I would suggest to the directors the propriety of adopting a rule, directing that the officers shall give an acknowledgment of the receipt of a notice of a transfer of a policy. I have experienced something bordering on rudeness from the officials of one office, who peremptorily refused such an acknowledgment. After a lapse of a quarter of a century, it is not difficult to imagine the obstacles to legal proof of such a notice.

AN ASSURED.

NOTES OF THE WEEK.

THE NEW JUDGE.

Richard Budden Crowder, Esq., Q. C., of the Western Circuit, has been appointed to the seat in the Court of Common Pleas, vacant by the death of the late lamented Mr. Justice Talfourd. Mr. Crowder was called to the Bar by the Honourable Society

of Lincoln's Inn on 25th May, 1821, and was promoted to the rank of Queen's Counsel in 1837. He held the offices of Recorder of Bristol since August, 1846; Counsel to the Admiralty, and Judge-Advocate of the Fleet. He represented the Borough of Liskeard since 1849, and was Deputy Lieutenant of the County of Cornwall. He is the brother of Mr. George A. Crowder of the eminent firm of Crowder and Maynard.

HOLIDAYS IN EASTER TERM.

By the 11 Geo. 4 and 1 Wm. 4, c. 70, s. 6, it is provided that if any of the days intervening between the *Thursday* before and the *Wednesday* next after Easter-day, shall fall within Easter Term there shall be no Sittings *in Banc* on any of such intervening days, but the Term in such case shall be prolonged, and continue for such number of days of business as shall be equal to the number of the intervening days before mentioned, exclusive of Easter-day.

The Term commencing, according to the statute, on Saturday the 15th of April, there will be no sittings on that day, nor on Monday the 17th, nor Tuesday the 18th. The Term will consequently be prolonged, and Trinity Term postponed three days.

NEW MEMBERS OF PARLIAMENT.

Wm. Schaw Lindsay for Tynemouth, in the room of Hugh Taylor, Esq., whose election has been declared void.

Ralph William Grey, Esq., for Liskeard, in the room of Richard Budden Crowder, Esq., who has accepted the office of one of the Justices of her Majesty's Court of Common Pleas.

Thomas Taylor, Esq., commonly called the *Earl of Bective*, for the county of Westmoreland, in the room of William Thompson, Esq., deceased.

The Hon. Adolphus Frederick Charles Wm. Vane, commonly called *Lord Adolphus Vane*, for the northern division of the county palatine of Durham, in the room of George Henry Robert Charles Wm. Vane, commonly called Viscount Seaham, now Earl Vane, summoned to the House of Peers.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Court of Chancery.

(Coram Lord Chancellor and Lords Justices.)

Esparte Lankester. March 18, 1854.

MARRIED WOMAN.—FILING BILL IN FORMA PAUPERIS WITHOUT NEXT FRIEND.

An application was granted for leave to a married woman to file a bill in forma pauperis without the intervention of a next friend, where it was sworn she could obtain no party to act in that capacity.

This was an application by direction of Vice-Chancellor Wood for an order for leave to a married woman to file a bill in forma pauperis without the intervention of a next friend.

W. M. James in support, on an affidavit that

she was unable to procure any party to act as her next friend,

The Court granted the application.

In re Greaves. March 29, 1854.

APPOINTMENT OF GUARDIAN AD LITEM TO LUNATIC MORTGAGEE ON LAND TAKEN FOR RAILWAY.

On motion by the mortgagor, a guardian ad litem was appointed without a commission to the mortgagee of land taken by a railway company under their act, who was of unsound mind, although not so found by inquisition.

This was an application for the appoint-

ment of a guardian *ad litem* to a person of unsound mind, although not so found by inquisition, and who was mortgagee of certain property taken by the Great Northern Railway Company under their Act.

Hawkins, on behalf of the mortgagor, in support, there being no suit before the Court in which the motion could be made.

The Court said, that the order could be made under their general jurisdiction, and without the issue of a commission.

Lords Justices.

In re Cumming. Feb. 10, 1854.

COSTS OF PROCEEDINGS IN LUNACY ALLOWED AGAINST ESTATE ON DEATH OF LUNATIC.

Pending the traverse of an inquisition in lunacy, the lunatic died, and the common administration decree was made in a creditors' suit against her administratrix, one of the petitioners for the commission: Held, that as the proceedings were for the benefit of the deceased, the costs and charges taxed at a proper amount ought to be paid out of the estate—the creditors' solicitor to attend the taxation.

It appeared that pending the traverse of the inquisition in this lunacy, the lunatic had died, and the common administration decree had been made by Vice-Chancellor *Stuart* in a creditors' suit against her administratrix, who was her daughter, and one of the petitioners for a commission, and the allowance was now sought against the estate of the costs therein incurred.

W. M. James, Burdon, and W. Morris appeared for the several parties; *Baily and Southgate* for the creditors.

The Lords Justices said, that as the proceedings were for the benefit of the deceased, the costs and expenses taxed to a proper amount ought to be paid out of her estate—the solicitor to the creditors to attend the taxation.

Burton v. Loveday. March 27, 1854.

GUARDIAN AD LITEM ON PARTY TO SUIT BECOMING OF UNSOUND MIND.—JURISDICTION OF VICE-CHANCELLOR.

On a party beneficially interested in a suit becoming of unsound mind, and where no commission in lunacy had issued: Held, that it was a matter in Chancery, and that the Vice-Chancellor had jurisdiction to appoint a guardian ad litem.

THIS was an application, by direction of Vice-Chancellor *Kindersley*, for the appointment of a guardian *ad litem* to one of the parties beneficially interested in this suit and who had become insane. It appeared that no commission in lunacy had issued.

Jessel in support; *Parke and Pole* for other parties.

The Lords Justices said, that as the matter was in Chancery and not in lunacy, the Vice-Chancellor had jurisdiction to make the order, but the order would in the present case be made.

Boosey v. Gardner. March 27, 1854.

WILL.—CONSTRUCTION.—CONTINGENCY OF REQUEST OVER ON TENANTS FOR LIFE SURVIVING TESTATRIX.

The testatrix gave to her two sisters the interest of her property in the long annuities, jointly for their lives, to be paid half-yearly as received, and in case of one or both of their deaths before her, she gave the whole of the interest in the long annuities to her brother for life, and on his death she gave half of the interest to her niece, to help to bring her up till she attained the age of 21, then to receive half the capital, and she bequeathed to her nephew, her brother John's son, if not further family, the other half, and in case of further family, to be divided between them at the age of 25, not dividing the half she had left to her niece, as it was her will that she should have the one-half: Held, on appeal from the Master of the Rolls, that the interest of the nephew and niece was not contingent on the sisters surviving the testatrix, and that they took, notwithstanding both the sisters so survived.

THE testatrix, Mrs. Evans, by her will, bequeathed to her two sisters the interest of her property in the long annuities, jointly for their lives, to be paid them half-yearly as received; in case of one or both of their deaths before her, she willed and bequeathed the whole of interest in long annuities to her brother for his life; at his death half of the interest she willed and bequeathed to her niece, her brother's daughter, to help to bring her up till she should attain the age of 21 years, then to receive half the capital; she then willed and bequeathed to her nephew, her brother's son, if not further family, the other half; in case of further family, to be divided between them at the age of 25 years, not dividing the half she had left to her niece, as it was her will that she should receive the one-half. On a question as to the construction of this will, the Master of the Rolls had held, that the gifts in remainder were contingent on the death or deaths of the sisters during the lifetime of the testatrix, and that as they had both survived, they did not operate; whereupon this appeal was presented.

R. Palmer and W. W. Cooper in support; *Lloyd and C. Hall*, contra; *W. W. Mackeson and Hitchcock* for other parties.

The Lords Justices said, that the interests of the appellants did not depend on the contingency of sisters surviving the testatrix, and allowed the appeal accordingly.

Master of the Rolls.

Bayley v. Collett. Jan. 28, 1854.

SALE OF REVERSIONARY INTEREST UNDER POWER OF ATTORNEY.—PAYMENT OF INTEREST.—SPECIAL CASE.

The defendant, on going abroad, had appointed attorneys to sell and convey freeholds

which she held in fee on the death of a tenant for life, and to give full discharges for the purchase-money, and to convey, surrender, and assure the lands. They accordingly conveyed to the plaintiff's testator, who entered into possession on the determination of the life estate. The defendant afterwards conveyed the freeholds to a purchaser: Held, on special case under the 13 & 14 Vict. c. 35, that the testator was liable for interest from the date of the contract; but held that a claim or bill must be filed to obtain a decision of the disputed questions whether the plaintiff would be secure in paying the purchase-money to the attorneys, and whether they could make a good title to the copyholds to which the defendant had never been admitted.

It appeared that the defendant, Mrs. Collett, on going to Van Diemen's Land, had appointed Messrs. Kiddell & Baker, her attorneys, to sell and convey a freehold and copyhold estate to which she was entitled in fee on the determination of a life estate, and to receive and give full receipts, releases, and discharges for the purchase-money, and to convey, surrender, and assure the lands. It also appeared that Lord Methuen had contracted for the purchase, and that on the death of the tenant for life about three years afterwards, he had entered and remained in possession until his death, leaving the plaintiff to this special case under the 13 & 14 Vict. c. 35, his executor. Mrs. Collett had subsequently conveyed the freeholds to a purchaser, and had never been admitted to the copyholds. The questions now submitted were, whether the plaintiff was liable to interest on the purchase-money, and whether he would be secure in paying it to the attorneys, and whether they could make a good title to the copyholds.

Beavan for the plaintiff; *Shapter* for the defendant.

The Master of the Rolls said, that interest must be paid on the purchase-money from the date of the contract. With respect to the other questions, as they were in dispute between the parties, no decision could be given on a special case, but must come on in the form of a bill or claim.

Reeves v. Baker. March 23, 27, 1854.

WILL.—CONSTRUCTION.—WHETHER COPYHOLDS PASSED UNDER DEVISE.

A devise of all the rest of the testator's property (after payment of funeral expenses, &c.), whether freehold or copyhold and wheresoever situate, to his wife, her heirs or assigns for ever, held to pass copyholds.

A TESTATOR gave, after paying all his funeral and testamentary expenses, &c., all the rest of his property, whether freehold or personal and wheresoever situate, to his wife, her heirs or assigns, for ever (reported on another point, *ante*, p. 425). The question was raised, whether the copyholds thereby passed.

The Master of the Rolls, after taking time to consider, said, that the devise included the copyholds, which therefore passed.

Vice-Chancellor Stuart.

Powdrell v. Jones. March 29, 1854.

MARRIAGE SETTLEMENT.—COVENANT TO SETTLE ESTATE.—SUBSTITUTION OF ANOTHER ESTATE.—SUM RECEIVED FOR EQUALITY OF EXCHANGE IS SPECIALTY DEBT.

By a marriage settlement, the husband covenanted to settle, on certain trusts, an estate which he contracted to exchange for another estate, but he afterwards re-exchanged, and received a sum of money by way of equality of exchange. A decree was made in a suit for the administration of his estate, declaring that this estate, together with the sum received, should be taken in substitution of the estate covenanted to be settled, and directing an account of the specialty debts and of what was due to the trustee and the other simple contract creditors: Held, on motion to vary the Chief Clerk's certificate of such sum being a simple contract debt only, that the trustee was entitled as a specialty creditor.

It appeared that upon the marriage of Mr. George Harper in 1843, he had covenanted within 24 months to settle in trust as therein mentioned the Belvidere estate, which he had previously contracted with a Mr. Goodall to exchange for an estate called Mossfield, and that he had afterwards given back the Belvidere estate in exchange for the Mossfield estate, receiving 1,050*l.* by way of equality of exchange. On his death, this suit was filed for the administration of his estate, and by a decree it was declared that the Mossfield estate, together with the sum of 1,050*l.*, should be taken in substitution of the Belvidere estate, and accounts were directed of the specialty debts and of what was due to the trustees of the settlement and the other simple contract creditors. The Chief Clerk had accordingly certified that the trustee was a simple contract creditor for the amount in question, whereupon this motion was made to vary his certificate.

Malins and *Kenyon* in support; *Wigram* and *C. Hall* for the defendant, *contra*.

The Vice-Chancellor said, that the trustee was entitled as a specialty creditor.

Vice-Chancellor Wood.

Taylor and another v. Taylor. Jan. 19, 1854.

INJUNCTION.—USE OF TRADE-MARKS.—WHERE COLOURABLE DIFFERENCES.

An injunction was granted to restrain the defendant from using trade-marks on reels of cotton similar to the plaintiffs', where it was clear that the differences were merely colourable, and the resemblances were obviously made to deceive purchasers.

Bacon and *Bazalgette* appeared in support of

this motion, to restrain the defendant from using the plaintiffs' trade-marks on reels of cotton. It appeared that the defendant had, in 1852, discontinued his former labels and used labels with the words "Taylor's Persian Thread," similar to the plaintiffs, and it appeared that the plaintiffs' trade had materially been injured.

Rolt and Little for the defendant.

The Vice-Chancellor said, that the differences were merely colourable, and that the resemblances were obviously made to deceive purchasers, and amounted, therefore, to an improper use of the plaintiffs' trade-marks. The injunction was accordingly granted.

Sharshaw v. Gibbs. Feb. 14, 1854.

MARRIAGE SETTLEMENT.—TENANT FOR LIFE.—PAYMENT OF ARREARS OF INTEREST ON MORTGAGE, AND OF REPAIRS.—BOND.

A bond was settled with other property, subject to a mortgage for the joint lives of S. and his wife, with remainder on S.'s death to his wife for life, with remainder to their children. S., as executor of his father, the obligee, received the bond and deposited it with bankers, as security for a loan, and died insolvent, leaving arrears on the mortgage and certain necessary repairs to be made: Held, on petition of the trustees of the settlement, that the amounts due to the bankers and for the arrears of interest on the mortgage, were chargeable on the inheritance, but not the sum paid for repairs—it being small and no case of wilful waste by S. being made out.

THIS was a petition on behalf of the trustees, appointed by a decree, of the marriage settlement of Mr. and Mrs. Sharshaw, for leave to raise by sale or mortgage out of the settled property, the amount of certain payments. It appeared that the property, which consisted of hereditaments, subject to a mortgage, and of a money bond, was settled on them for their joint lives, with remainder on the husband's death to the wife for life, with remainder to the children, and that the husband had deposited the bond, of which he came in possession as executor of his father, the obligee, as security for moneys borrowed from bankers, without notice of the trust, and had died insolvent. The wife had paid the amount due to the bankers out of her income, and the trustees had paid the arrears of interest on the mortgage due at the husband's death out of the moneys received on the bond, and also a sum in repairs on the estate, which ought to have been expended in the husband's life time. These payments were now sought to be raised.

Follett and Kinglake in support; *A. J. Lewis*, contra.

Cur. ad. vult.

The Vice-Chancellor said, that the amount required to redeem the bond must be raised and paid, but that the repairs could not be allowed as a charge on the property, the sum not

being large nor a case of wilful waste by the former tenant for life made out. As to the arrears of interest on the mortgage debt, their payment out of the other settled property by the trustees would be allowed, and were primarily a charge on the inheritance.

Haggar v. Neatby. Feb. 19, 1854.

SPECIAL CASE.—WILL.—CONSTRUCTION.—SETTING APART SUM FOR YEARLY PAYMENT

A testatrix gave to trustees "the sum of 20l. per annum bank long annuities, or an annual or yearly sum equal thereto," to her daughter for her life, and after her decease on trust "to pay, assign, transfer, and make over the principal stock or money which shall be set apart for the payment of the said yearly sum" to the children, &c.: Held, on special case under the 13 & 14 Vict. c. 35, that such a sum must be set apart as when invested in 3 per cent. consols would produce the amount in question.

THE testatrix, by her will, gave to her trustees "the sum of 20l. per annum bank long annuities, or an annual or yearly sum equal thereto," in trust to pay the same to her daughter for life, and after her decease on trust "to pay, assign, transfer, and make over the principal stock or money which shall be set apart for the payment of the said yearly sum," to the children living at her death, share and share alike. On the death of the testatrix in 1833, it appeared she had bank long annuities, which were terminable in 1860, to the amount of 50l. per annum. This special case was presented under the 13 & 14 Vict. c. 35, by the daughter and her only son as plaintiffs against the executors as to the construction of the will.

Rolt and Cairns for the plaintiffs; *Bacon and Surrag* for the defendants.

The Vice-Chancellor said, that the testatrix intended to give a permanent annuity to the plaintiff for life, and then to her children, and contemplated that a principal sum should be set apart for the payment of such annuity, and a declaration would therefore be made for such a sum to be set apart as when invested in 3 per cent. consols would produce the amount.

Bryan v. Wastall. March 17, 1854.

FORECLOSURE SUIT.—AMENDMENT OF BILL BY ADDING PARTIES AFTER REPLICATION ON EXPARTE MOTION.

An order was made on motion ex parte for leave to amend the bill in a foreclosure suit, by adding the names of two judgment creditors after replication filed.

THIS was a motion ex parte for an order for leave to amend the bill in this foreclosure suit, by adding the names of two judgment creditors. It appeared that a replication had been filed.

R. W. E. Forster in support.

The Vice-Chancellor made the order asked.

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DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, APRIL 15, 1854.

UNPOPULARITY OF ATTORNEYS.

MR. BOUVERIE AND THE SOUTH SEA SCHEME.

WE thought the time had gone by when the general body of the Legal, Medical, or Clerical Professions could be treated in an assembly of gentlemen with contempt or derision. Years ago, the Attorneys and Lawyers generally, with Apothecaries and Parsons, were objects of disparagement and ridicule on the Stage, in the writings of the Novelist, and especially in the Newspapers. The delinquencies of one were taken as the type of the whole. But for many years the Press, and especially the most respectable part of it, has done the Profession justice;—not visiting the sins of the few upon the many, or concluding that the instances of professional misconduct which are brought to light are only the samples of universal corruption.

It cannot, however, be denied that the number of “despairing quacks” and “vile attorneys” is still considerable, and that the general body suffers in public estimation from the malpractice of individuals. Briefless Barristers are ridiculed, as if there were any discredit in being unemployed in a Profession in which for many years an Eldon was overlooked; and Attorneys are disesteemed because they are remunerated by small fees for each particular service, instead of a large per centage for the whole of their labour, skill, and responsibility.

We have received several communications on the offensive, absurd, and slanderous remarks made by the “Honourable Edward Pleydell Bouverie” on the general body of Attorneys and Solicitors, during the discussion of the Bill “for enabling the South Sea Company to realise and divide their assets, and to undertake the administration of private trusts.”

VOL. XLVII. No. 1,362.

After Mr. *Spencer Follett's* motion, supported by Mr. *Malins*, to expunge all the Private Trust Clauses had been disposed of, Mr. *Mullings* moved an amendment, which appeared to be founded in good sense and common justice, “that no executor or trustee who had accepted a trust should be allowed to rid himself of it, unless he were expressly authorised to do so by the will or instrument creating the trust.”

This proposition, which, if carried, would have prevented the *breaches of trust* contemplated by the promoters of the Bill, did not suit the purpose of the South Sea Company. It happened that waiting for the important message from the Throne,—declaring war with Russia,—there was a large number of our legislators present, rarely seen on other occasions. In numerous assemblies the majority are generally ill informed and prejudiced; and such an assembly Mr. Bouverie appears to have thought he was addressing. If time and circumstance had favoured the right cause, we believe the Honourable Member would have found himself in a minority. No doubt he thought it a dexterous argument to assail the opposers of his Bill by imputing to them selfish motives, and assuming that the “*interests of Attorneys*” were alone involved in obstructing the measure.

According to the notes of the short-hand writer, the Honourable Mr. Bouverie said, —“I think the fact of this Bill being opposed by the Attorneys is the strongest argument in its favour! The two great evils of this country are *Taxes* and *Attorneys*. What an Attorney is, cannot exactly be defined; but it appears to me that he is a professional gentleman who charges 13s. 4d. for doing something, and 6s. 8d. for doing nothing.”

Before discussing the grounds of this slanderous attack on a class of professional

men, collectively as intelligent and as respectable as the Members of Parliament themselves,—imputing unworthy, selfish, and pecuniary motives for their opposition to the Bill in question,—let us ask *who* is the Accuser? The answer is, that he holds the important position of Chairman of the Committees of the House, and therefore his animadversions assume an importance that might not otherwise belong to them; the honourable member is the second son of the Earl of Radnor, and *brother* of the Honourable Philip Pleydell Bouverie, the *Deputy Governor* of the South Sea Company, and who, according to the usual course of things, would in a year or two be the Governor thereof. Now, it may be remarked, that when a suitor in a Court of Equity accuses another of a wrong and asks for a decree, it is required as a first principle, that the accuser should “come into Court with *clean hands*.” In other words, that he should not be guilty of the injustice or improper conduct which he imputes to his opponent.

Let us see, however, the value of this argument in favour of the Bill, “because it is opposed by Attorneys.” When an alteration in the Law is proposed for the benefit of a Joint-Stock Company, its Governor, Deputy Governor, Standing Counsel, Solicitor, and Secretary, are not the Attorneys and Solicitors, who have to carry into effect the altered law in behalf of their clients, the fittest persons, from their long practical experience, to point out the probable operation and consequences of the change? A legislator may not unjustly say,—“I cannot implicitly rely on your evidence, because you may have the bias of self-interest;” but he would be foolish indeed who not only excluded the evidence altogether, but acted in direct opposition to it! For what purpose has been all the loudly boasted improvements in the Law of Evidence,—admitting the testimony of parties directly interested in the issue,—if when such evidence is given you are to reject it and assume it to be false? Thus, we are told that the opposition of the Attorneys, the reasons they state against the measure, the danger and mischief they point out, are to be disregarded without investigation. Is not this the greatest of absurdities that was ever uttered by a Chairman of Committees?

Then we are told “the two great evils of this country are *Taxes* and *Attorneys*.” Where is the country without Taxes or without Lawyers? Some country, we sup-

pose, where there is no Government and no Laws.

The honourable member, according to the report, next discloses his ignorance of the qualifications, duties, and office of the larger branch of the Profession. He says,—“An Attorney cannot be exactly defined; but he charges 6s. 8d. for nothing, and 13s. 4d. for something.” For the smaller charge the client gets nothing, and though for the larger he has some return, the honourable member evidently rates it at small value.

May we ask whether this is a decent way of speaking of the Attorneys and Solicitors of England, or of any other professional class, who devote many years of study and preparation, and expend large sums to qualify themselves for the performance of their duties? If the Attorneys (like Taxes) are an evil in this country, why are they necessary and absolutely unavoidable? Is it because the law-makers (rejecting all legal advice) are not Solons, and that the products of their manufactory occasion far more litigation than they prevent? Is it because mankind, instead of being wise, are foolish;—instead of being honest, are knavish;—instead of being economical, are extravagant;—instead of being prudent, honourable, and virtuous, are imprudent, vicious, fraudulent, and criminal? When we have perfectly wise laws, and when men invariably lead good lives, and are without fault or blemish, then will Attorneys be a “useless race,” and we calculate not till that happy time arrives.

Thus, we conceive, it is very apparent that Mr. Bouverie, in the speech he thought proper needlessly to make, has exposed himself to the charge of absurdly attempting to argue an important legislative question by an appeal to an unjust and almost worn-out prejudice, and to fasten the slander of selfishness on men as honest as himself or his relative the sub-governor of the scheme in question. “Men in glass houses should not throw stones.”

We are informed that the following *jeu d'esprit* has been addressed to the Hon. E. P. Bouverie, M. P., on occasion of his speech on the South Sea Job Bill:—

“Mr. Bouverie, on the third reading of this Bill, is reported, after indulging in the ordinary vulgar slang about Attorneys, to have expressed his ignorance of what their professional duties might consist. A member of that Profession, quite as well born, and apparently better bred, than Mr. Bou-

verie, would inform him that their duties are divisible into two extensive branches,—the detection of *fraud*, and the protection of *folly*. Mr. Bouverie may select that horn of the dilemma most applicable to himself; those who know him best would assign to him the *latter* category.”

ARBITRATION LAW AMENDMENT BILL.

THE following is the substance of the proposed clauses in Lord Brougham's Bill on this subject :—

Parties may refer any matter to a County Court Judge by memorandum; sect. 1.

County Court clerk to give notice of meeting; witnesses, &c., to attend as on a plaint; s. 2.

Scale of fees may be framed for arbitration before County Court Judge; s. 3.

On County Court award, execution as on a plaint, also commitment for 40 days; s. 4.

Memorandum, submission, and covenant to refer may be made rule of Superior Court unless a contrary intention appear, except references under certain Statutes; s. 5.

Memorandum, submission, and covenant to refer may be pleaded to action or suit, and proceedings may be stayed; s. 6.

Memorandum, submission, and covenant to refer not revocable without leave of Court or Judge; s. 7.

Award to be made within three months, unless parties or Court enlarge time; s. 8.

If arbitrator refuse, or become incapable, or die, another may be appointed, unless submission forbid; s. 9.

When mode of arbitration not specified, each party to appoint an arbitrator; s. 10.

When reference to two arbitrators they may appoint an umpire, unless submission forbid; s. 11.

When reference to more than one arbitrator, and party fail to appoint, other arbitrators may act alone; s. 12.

On failure of parties or arbitrators, County Court Judge may appoint single arbitrator or umpire; s. 13.

Court or Judge may set aside improper appointment of arbitrator, &c.; s. 14.

Party refusing to appoint arbitrator, &c., or delaying or preventing award, or not producing documents, &c., guilty of contempt of Court; s. 15.

Party to pay costs for preventing award; s. 16.

Court (except in County Court reference) may order witnesses to attend; s. 17.

Arbitrator, &c., may examine on oath, unless submission forbid; s. 18.

Arbitrator, &c., may call in accountant or scientific person, unless a party object; s. 19.

Arbitrator, &c., may receive affidavits, unless a party object and pay costs of bringing up witness; s. 20.

Arbitrator, &c., may amend, unless submission forbid; s. 21.

Arbitrator, &c., may award a verdict in an action, and certify, unless submission forbid; s. 22.

Arbitrator, &c., may award judgment, unless submission forbid; s. 23.

Arbitrator, &c., may proceed *ex parte*, after notice; s. 24.

Arbitrator, &c., may state a case in the award; Court may amend or remit back award; s. 25.

Arbitrator, &c., unless submission forbid, may award as to costs of reference and award, which may be taxed; s. 26.

Arbitrator, &c., need not award on specific issues for costs, unless required; s. 27.

Rule on award to deliver possession of land as a judgment in ejectment; s. 28.

Award may be enforced by attachment; s. 29.

Court may set aside or refer back award; s. 30.

Court or Judge before trial may order arbitration on matters of account; s. 31.

Judge at trial may refer matters of account; s. 32.

Judges to make General Rules; s. 33.

Act not to apply to Scotland or Ireland; s. 34.

Title “The Arbitration Act, 1854;” s. 35.

DECLARATORY SUITS' BILL.

THIS is a Bill for giving a remedy by way of declaratory suit, and has just been introduced by Lord Brougham. The preamble states, that it hath been found in the law and practice of *Scotland* that great benefit results from giving to parties an easy method of establishing rights before the same are contested by any process of litigation thereof, saving much expense and anxiety, and preventing the loss of evidence touching the same. In order to afford a like remedy in other parts of the United Kingdom, under proper regulations, and with such alterations as may best adapt the same to the system of law therein established: it is proposed to enact as follows :—

1. Any person possessed of any estate in lands, tenements, or hereditaments, whether at law or in equity, or of any personal estate, or of any office or franchise, or of any easement, or of any right or claim to such estate, office, franchise, or easement, may file his bill in the Court of Chancery in England or in Ireland, setting forth the nature of his said estate or right or claim, and suggesting that he is apprehensive that the right of which he stands possessed in such estate, office, franchise, or easement may be disputed, or that the right or claim which he alleges is denied by the adverse possession of other parties, and to pray that

the parties whom he may suggest as likely to dispute the same, or the parties who do at present deny the same, as the case may be, shall full answer make to the matters of his bill, whereupon such parties, being duly served with notice, and the bill, according to the practice of the said Courts, shall be required to answer according to such practice, and the plaintiff filing the bill may reply thereto, according to such practice, and upon an issue being therein joined the Court shall proceed to hear the same, or to order a commission for examining witnesses, or to direct an issue to be tried at law; as to the Court shall seem meet: Provided that at any stage of the proceeding it shall be lawful for the said Court to direct an issue to be tried at law, and provided that either party may require such issue to be tried: Provided further, that upon the trial of any issue under this Act all bills of exceptions shall be carried before the Court out of which the record shall come, and be disposed of therein, and all motions for new trial shall likewise be made therein, and the judgment of the said Court shall be given upon the issue, and shall declare the finding of the jury according to such finding; and the said judgment, with the matter of any exceptions taken in the course of the proceeding, shall be examinable by the Court of Error in like manner as if the issue had been tried and judgment given in any action first brought in the said Court out of which the record shall have come; and the said judgment, if not brought by writ of error before any Court of Error, or the judgment of the Court of Error before whom it may be brought, shall be final and conclusive upon the Court of Chancery out of which such issue shall have been sent, in further dealing with the subject matter of such suit.

2. Any party defendant to such bill may plead any matter in law or in equity, or demur to such bill (except for want of parties); and the Court shall decide on such plea or demurrer, allowing or overruling the same, or ordering the plea to stand for an answer, according to the practice of the said Court, and as it shall deem just.

3. The plaintiffs may except to the answer made by any defendant, and the Court may decide on such exception according to such practice as aforesaid.

4. In any stage of such proceedings the Courts may send a case for the opinion of any Court of Law, according to such practice, whether any party shall require them so to do or not; but if either party shall require it, such Courts shall be bound to send such case; and the certificate of the Court, with the case sent, may be carried by writ of error to the Courts of Error, in like manner as if a judgment had been given in an action before such Court of Law; and the judgment, if not brought under review of the Court of Error, or the judgment of the Court of Error, shall be binding and conclusive upon the Court of Chancery from which the case had been sent, in further dealing with the matter of such suit.

5. In further proceeding with such suit the said Court of Chancery shall have power to refer any matters connected therewith or arising therefrom for inquiry to the *Masters* of the said Courts; and such *Masters* shall proceed therein and report according to the practice of such Courts; and such reports may be excepted to, according to such practice; and such orders may be made upon such reports as the Court shall think just, and as shall accord with their practice.¹

6. The said Courts shall make such decrees upon the matter of the said Bills, after the whole shall have been fully inquired into, as shall appear just according to Law and Equity, but such decree shall only declare the rights of the said parties, and shall not affect the present possession or enjoyment of any estate or easement or other right; but such decree shall be conclusive and binding upon all the parties to such suit, and all persons claiming under or through them, in all Courts of Law or Equity whatsoever, as often as any suit or action shall be brought in any Court of Law or Equity by or against any such parties, or any persons claiming by or through them.

7. Any person may file his bill to have his legitimacy found and declared by sentence of such Court, making parties defendants to such bill any persons who may be suggested as likely to dispute the same; and the proceedings in regard to such bill shall be the same as hereinbefore enacted and provided in regard to any bill filed touching an estate in possession, or easement, or other right enjoyed by any party.

8. Any person having any interest, or who may appear likely in future to have any interest, in proving any person to be a bastard, may file his bill praying to have the bastardy found and declared by decree of such Courts, and making party defendant to the said suit the person whose bastardy he seeks to have declared, and the proceedings in regard to such bill shall be the same as hereinbefore enacted and provided in regard to bills filed by parties claiming to have right to any estate or easement from which they are excluded by parties in possession.

9. The said Courts may direct the question of the validity of any marriage which may come in dispute, the parties to which marriage are both still living, to be tried by the Consistorial Courts, according to their practice, and subject to appeal before her Majesty in Council, or if in Ireland before the delegates; and the decrees of such Courts, and the orders of her Majesty in Council, or of the delegates in Ireland, shall be conclusive and binding in respect to such marriage in the said Courts of Chancery, in dealing further with the suit out

¹ This section will require alteration. The reference will now be to the Judge at Chambers. References to the remaining *Masters* have ceased, or, as Sir George says, "possibility of reference extinct."—Ed.

of which the question touching such marriage shall have arisen.

10. The decree of the said Courts in the matter of such suits touching legitimacy and bastardy shall only declare the parties suing or defending respectively to be legitimate or bastard; as the case may appear to be, and shall be conclusive and binding upon all parties to such suits, and upon all parties claiming through or under them, in all Courts whatever.

11. Provided, that all orders and decrees made in suits under this Act shall be liable to be questioned by appeal to Parliament, in like manner as if the same had been made in any suits now competent by the law and practice of such Courts.

12. Nothing herein contained shall be deemed or taken to conclude or bind the Lords House of Parliament in any inquiry which may arise before them touching the rights of any person claiming any right of peerage, but that the decrees made by the Court of Chancery touching the said rights shall and may be receivable in evidence before the said House or any Committee thereof in any case arising before the said Lords House of Parliament.

13. No such decree or decrees shall be conclusive or binding upon her Majesty, her heirs and successors, in the case of any claim of any person to have a writ of summons calling such person to the Lords House of Parliament.

14. The costs of all parties to any suit

brought under this Act shall be paid by the party preferring the bill; such costs to be taxed and allowed according to the practice of the Court in which the same may be brought in taxing costs as between solicitor and client.

15. The Lord Chancellor of England; with the advice and consent of the Master of the Rolls and one or other of the Vice-Chancellors, and the Lord Chancellor of Ireland, with the advice and consent of the Master of the Rolls, may make rules and regulations for directing the practice of their several Courts in all suits brought under this Act; and the Lord Chief Justices of the Queen's Bench of England and Ireland, with the advice and consent of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer, may make rules and regulations for the trial of issues, and granting certificates on cases sent under this Act, out of the Courts of Chancery in England and Ireland respectively; which rules and regulations shall be binding upon the said Courts respectively, unless a resolution shall be passed by either House of Parliament disapproving of the same; and copies of all rules and regulations made under this Act shall be laid before both Houses of Parliament within six weeks after the same shall be made, if Parliament be then sitting, or within six weeks after the beginning of the next Session if Parliament shall not be sitting when such rules and regulations are made.

THE ACCOUNTANT-GENERAL'S ANNUAL CHANCERY ACCOUNT.

We are at length enabled to submit to our readers the Annual Account of the Accountant-General of the Court of Chancery, comprising the receipts and payments both of the Suitors' Fund and the Fee Fund.

It will be observed that the stock account amounts to 3,882,569*l.* 16*s.* 1*d.*, or nearly to four millions, and that the annual dividends of such stock during the year has been 113,312*l.* 17*s.* 10*d.*

This principal money of nearly four millions remains untouched, but out of the dividends has been paid for salaries and pensions a sum of 62,441*l.* 19*s.* 6*d.*; and the surplus of 46,325*l.* 13*s.* 3*d.* has been carried to the Fee Fund under the authority of the 15 & 16 Vict. c. 83, s. 53.

SUITORS' FUND.

The following are the *payments* for the year commencing 2nd October, 1852, and ending 1st October, 1853:—

To Cash paid Lord Chancellors, Lord St. Leonards' and Lord Cranworth's.		£.	s.	d.
—	Salary		2,913	10 0
—	Lord Justice Knight Bruce's ditto		1,456	5 0
—	Lord Justice Turner, ditto		1,213	10 10
—	Vice-Chancellor Stuart, ditto		765	1 2
—	Vice-Chancellor Parker, ditto		498	9 9

£ 6,795 16 9

¹ The Judges' Salaries are in future to be paid out of the Consolidated Fund.

	£	s.	d.
To Cash paid Masters, Salaries	25,345	16	11
— Pension to two retired Registrars	2,541	3	10
— Accountant-General's Office	8,521	18	11
— Examiners	515	0	11
— Two Clerks in the Clerks of Accounts' Office	31	2	8
— Two Clerks in the Report Office	64	2	5
— Officers of Courts	5,305	2	10
— Surveyor's Salary	77	13	4
— Compensation to the late Officers of the Court of Exchequer	4,859	8	6
— Solicitor to the Suitors, in lieu of Costs and his Disbursements	1,326	17	9
— Costs of Contempt, under Lord St. Leonards' Act	184	7	7
— Expenses of Courts, Registrars', Masters', Report and other Offices, for repairs, rates, stationery, coals, candles, gas, servants' wages, &c.	5,127	9	10
— Compensation to Officers of the Subpena Office, Doorkeeper, Crier, and Usher of the Court, Deputy Secretary of Decrees and Injunctions, one Clerk of Entries, and one Clerk in the Clerks of Accounts' office	1,745	17	3
Total Payments	62,441	19	6
Surplus interest carried over to the Suitors' Fee Fund Account, as directed by 15 & 16 Vict. c. 87, s. 53	46,325	13	3
Balance on the Account, 1st October, 1853	17,745	8	4

Receipts: Cash Balance 1st October, 1852	£ 13,200	3	3	£126,513	1	1
Dividends	113,312	17	10			
Stock £3,882,558 16 1				£126,513	1	1

FEE FUND.

Payments.

	£	s.	d.
Payments made since Nov. 24, 1852, but included in previous Return as payable Officers of the Court	7,171	11	2
Eight Senior Clerks to the Master of the Rolls and the Vice-Chancellors' Salaries	7,205	14	8
Eight Junior Clerks to ditto	11,600	0	0
Compensation to two Masters, at 725 <i>l.</i> per annum			
Seven Masters' Chief Clerks' Salaries at 1,000 <i>l.</i> each, and proportion to four others	17,832	18	9
Seven Masters' Junior Clerks' Salaries and Compensations			
Compensation to one Chief Clerk to Master at 750 <i>l.</i> per annum			
Arrears of compensation to ditto			
Compensation to three Masters' Junior Clerks			
Salaries to eleven Registrars			
Allowances for writing, and compensation to Registrars under 3 & 4 Wm. 4, c. 94, s. 48, and 5 Vict. c. 5, s. 63	26,844	11	4
Salaries to fourteen Registrars' Clerks			
Bag Bearers to Registrars			
Salary to Master of Reports and Entries			
Salaries to two Clerks in Report Office			
Ditto Clerks of Entries	6,837	2	8
Compensation to late Clerks of Accounts			
Pension to late Master of Reports			
Part of Examiners' Salaries to two Examiners			
Salaries to two Clerks to Examiners	3,450	16	9
Compensation to one Clerk to Examiner			
Salaries, &c., under 5 & 6 Vict. c. 84:—			
Two Masters in Lunacy			
Travelling expenses			
Salaries to seven Clerks to Masters in Lunacy			
Rent of premises			
Expenses of Offices	10,440	9	7
Salary of Registrar in Lunacy			
Salaries to four Clerks in Registrar's Office			
Expenses of Office			
Compensation to late Commissioners in Lunacy			
Ditto to late Clerk of Custodies			
Compensation to three Clerks of Affidavits	1,729	6	11

	£	s.	d.
Salaries, &c., under 5 & 6 Vict. c. 103 :—			
Six Taxing Masters			
Twelve Clerks to ditto			
Clerk of Enrolments			
Clerks to ditto			
Four Clerks of Records and Writs			
Sixteen Clerks to ditto			
Rent of Taxing Masters' Offices			
Salaries to two Clerks of the Petty Bag Office, under 12 & 13 Vict. c. 110			
Compensation to one Clerk of the Petty Bag Office, under 12 & 13 Vict. c. 110	773	1	11
Accountant-General in lieu of brokerage, under 15 & 16 Vict. c. 87, s. 19	2,700	0	0
Increased Salary to some of the Clerks in the Accountant-General's Office, under 15 & 16 Vict. c. 87, s. 39	2,184	13	0
Compensation for loss of Office and Profits, under 5 & 6 Vict. c. 103 :—			
Two Six Clerks			
Twenty Sworn Clerks			
Two Agents to Sworn Clerks			
One Clerk of Enrolments			
One Deputy Clerk of Enrolments, Deputy Record Keeper, and Agent to Sworn Clerk			
Sealer			
Messenger			
Copy Money for writing and copying in the offices of the Taxing Masters, Clerk of Enrolments, and Clerks of Records and Writs and expenses of the various Courts and Offices, for stationery, coals, candles, servants' wages, rates and taxes, and for furniture, &c.	8,445	13	6
Balance of Cash on the 24th November, 1853	16,577	11	4
	£183,764	8	3

Receipts.

	£	s.	d.
Balance of Cash on the 24th November, 1852	17,962	16	9
Fees received since, but included in previous Return as receivable	6,733	3	9
Fees received in the Masters' Offices	737	2	10
" " Subpoena Office	96	12	0
Fees formerly payable to the Lord Chancellor	1,334	8	3
Fees received by the Lord Chancellor's Secretary	161	6	6
" " Secretary of Lunatics	2,229	14	2
" " Clerks to Masters in Lunacy	2,350	8	10
" " Taxing Masters	287	5	0
" " Clerk of Enrolments	7,612	19	4
" " Petty Bag Office	619	16	6
Fees received under Winding-up Act	278	1	3
Cash received from the Commissioners of Inland Revenue	67,019	18	5
Cash brought over from various Causes, Matters, and Accounts, in lieu of Fees paid at Taxing Masters'	12,336	8	8
Cash brought over from Account of Moneys arising from Sale of Six Clerks' Office	44	4	0
Surplus Interest brought over from Suitors' Funds, under 15 & 16 Vict. c. 87, s. 53	46,325	13	3
Interest brought over from Account of Moneys placed out to provide, &c., under 15 & 16 Vict. c. 87, s. 54	14,637	7	1
Cash received from the Accountant-General for Brokerage, under 15 & 16 Vict. c. 87, s. 18	2,982	9	1
Fees received by the Serjeant-at-Arms	6	14	0
Fees received by the Messenger to the Great Seal	7	18	7
	£183,764	8	3

SOUTH SEA COMPANY'S TRUST BILL.

MEETING OF PROPRIETORS.

It is evident, from the report of the meeting of the Proprietors of the South Sea Company, that the Directors' plan has been forced upon the holders of South Sea Stock. At the meeting to authorise the Bill, there were only 48, out of several hundred proprietors, present, including about 12 directors; and the votes in favour of the project were . . . 29

Against it 19

Leaving a majority only of . . . 10

And consequently the majority at the meeting of independent proprietors was against the measure.

The following report of the meeting is extracted from the *Daily News* of the 20th January, 1854:—

A General Meeting of Proprietors of South Sea Stock was held on Thursday, January 19, at the Company's House, for the purpose of considering a Bill to be introduced into Parliament for the future regulation of the Company's affairs. The Chair was taken by *Charles Franks, Esq.*, Governor of the Company.

The *Chairman* said, that in order to bring the business fully before the meeting, he had prepared a report describing the course taken with respect to their Bill during last Session, and indicating that which it was their intention to pursue now. The chairman then proceeded to read the report, from which it appeared that the Chancellor of the Exchequer having brought in a Bill enabling him to pay off the Proprietors of South Sea Stock, the directors had caused the draft of another Bill to be prepared for the purpose of winding up the affairs of the company, and of forming a new trust company for the execution and management of various descriptions of trusts. This Bill passed the standing orders of the House of Commons, which applied as much to any Bill for dissolving the company as to one including the new trust powers. The Bill passed the House of Commons on its own merits; but, when brought before the House of Lords, an opposition was raised by the Incorporated Law Society; and a petition presented against it, signed by eight members only. The result was, that the Bill was declared to be in violation of the Wharnccliffe clause, and was consequently lost. The directors had now caused another Bill to be drawn up, and lodged according to the standing orders. The Bill provided that the directors should have power to sell and convert into money all the property and other effects of the company, and after paying off debts, compensating officers, pensions, &c., to divide the surplus amongst the

proprietors *pro rata*. It further provided, that if any proprietor did not wish to withdraw from the company, he should give notice to that effect within three months, and, not giving such notice, would be paid off. Trustees would be considered as withdrawing unless they gave notice to the contrary. Those who remain were to carry on business for the execution of trusts, wills, &c., but were not to be considered executors in their corporate capacity. A capital of 300,000*l.* was to be retained as a guarantee fund, and power was taken to dissolve the company if they could not raise that amount of guarantee. Alterations, it would be seen, had been made from the Bill of last year, and power was reserved to make further alterations if necessary. This was a short epitome of the Bill, and it would be seen that care was taken to avoid the objections that had been taken against the Bill of last Session. The chairman concluded by moving a resolution to the effect that the Court approved of the principle of the proposed Bill, and requested the directors to take the required measures, under the advice of counsel or otherwise, for carrying it through Parliament, with such modifications, alterations, or amendments as might be suggested by either House of Parliament, or as the directors might be advised to ask for.

A *Proprietor* asked why the directors had not applied for powers of executorship?

The *Chairman* said, that they had been advised not to do so, but the subject was still open for consideration. If they found that such powers might be obtained, there was nothing to prevent their being included in the Bill.

Another *Proprietor* observed, that there was now a new company applying for those powers, advertising every day.

The *Chairman* said, that he could not explain the precise grounds upon which they had declined to ask for those powers. With regard to the new company, the name of Pattenon, which was connected with it, gave him every confidence in its *bond fide* character. He believed that with proper management there would be plenty of business for both.

Sir Moses Montefiore seconded the motion, considering it to harmonise with the opinions expressed last year. He thought the Bill afforded every fair facility for either withdrawing or remaining with the company.

Mr. L. Mills wished to know how it was proposed to employ the capital of the company. He thought that the Bill should clearly define the mode of employment. He thought they were bound to show the exact sum they wanted, and to divide the rest among the proprietors.

The *Chairman* said that the directors had been engaged in profitably investing the money until the time came for dividing it; part at 3 per cent., and part in Exchequer bills. Another object which they sought to carry out was that of purchasing South Sea Stock at a fair price. With regard to the guarantee fund of 300,000*l.*, that sum had not been named by an arbitrary decision of the Court, but on communication

with the Government, as being a sum sufficient to secure the fulfilment of trusts. He believed that it was a minimum and not a maximum sum, and that if business extended a larger sum would be necessary.

Mr. Mills said, he must press to have a specific sum mentioned. If they took 300,000*l.* as a guarantee fund, did they propose to divide all the rest?

The Chairman said he had named the specific sum, and the hon. proprietor had asked whether the rest was to be divided; but he did not seem to perceive that he would have the option to subscribe or not as he would think fit. All who did not subscribe, would receive their share of the assets.

Mr. Mills was still unsatisfied. If 300,000*l.* was not sufficient, let the directors say what further capital was wanted. [The Chairman: No more.] Then was he to understand that all beyond that was to be returned to the proprietors? Was that to be a specific understanding?

Mr. Maude wished to know whether there were to be two funds—one to be used as caution-money, the other to be employed as the directors pleased, or in order to keep up that caution-money from time to time.

The Chairman said he understood the 300,000*l.* was to be a guarantee fund; but being caution-money, that sum must be kept up. It was obvious, however, that other funds would be necessary for a company like that for expenses, but as the sum would be comparatively small, he had not gone into details respecting it.

Mr. Maude—Supposing their assets to amount to 3,000,000*l.*, was all above 300,000*l.* to be returned to the proprietors?

The Chairman referred him to the Act empowering dissentient proprietors to withdraw, receiving their share of the assets. The funds of the company, he said, would be about 3,600,000*l.*, and if left with the directors they would invest it.

Mr. Maude thought that the Act should restrain them to certain kinds of investment, and that they should have some sort of clause, as in the case of insurance companies, limiting them to the public funds, or railway debentures, mortgages, &c.

The Chairman—He was chairman of one of the largest insurance companies in London, and they had no such limitations. The most advantageous plan for the proprietors would be to leave them to settle such matters themselves at their general meeting.

Mr. Maude thought that the new Act should provide for the election of directors, and that they should not be obliged to travel 150 years back for precedents.

Mr. Hammond said he had moved the original resolution, from which he found the new Bill to differ materially. If the Bill of last year had passed, he expected to get his money in six days, but now it appeared there was nothing about it. They offered equitable terms, but he should like to have the management of

his own property, and never contemplated going on *ad infinitum*, not knowing when his capital was to be returned. This new trust might answer—very likely it would; but then the trust clauses might prevent the Bill from passing, and then where were they? On reading the clauses, he saw that those who wanted their money must give three months' notice.

The Chairman—The three months' notice would be required where proprietors wished to remain. Dissentients would be paid as soon as the money was collected.

Mr. Hammond said that the great object was to fix a date at which the money would be paid. He feared that the new scheme would turn out a fallacy.

Mr. D. Mocatta wished to know whether his money would be returned to him in its integrity, with the option of investing what he thought fit in the new undertaking. He asked this question approving highly of the project.

The Chairman said the proprietors would have their money back and the option. With regard to Mr. Hammond's question, he would observe that the proprietors were not to consider themselves in the light of persons holding government security. They had obtained better income for cheaper stock than holders of consols, and must take the advantages with the disadvantages.

Mr. Hammond said that all he asked was his right as a proprietor of South Sea Stock, and not to have his interests mixed up with the fate of an Act of Parliament which might never pass.

Mr. Parnell said, that all these difficulties arose from the attempt of the directors to infuse life into a dead carcass. Ever since the early part of the reign of George I., that company had been getting worse and worse, and no attempt would be successful in saving it from death. The only course, as it appeared to him, was to wind up the old lady's affairs, and to provide for those who were the witnesses of her last moments, give her a decent sepulchre, and divide the money bags. For his part, he would not invest 5*l.* in the new company, he saw so many difficulties in the way. They would be perpetually over head and ears in law and difficulties, and poor people who entrusted their money would be embroiled in Chancery suits. They could not get on without a Chancery office, and that would be the fruitful source of constant litigation and delay. He submitted that the best plan was at once to wind up the affairs of the company, and he had come prepared with a proposition to that effect. It was in these words, "*That the Bill intended to be submitted to Parliament in the ensuing Session be restricted to the sole purpose of winding up the affairs of the company, and that all that portion that related to the management of trusts be expunged.*" If the proprietors agreed to that amendment, they might get their money in a month, while, if they agreed to the directors' Bill they would expose themselves to all the short turns and delays of Parliament. He might be told he

could borrow on his stock at three per cent., but he had never been a borrower, and did not mean to begin now, especially of his own money. Besides such an act would preclude his entry into that room.

The amendment having been seconded by Mr. Morgan,

Mr. Ansell expressed his approval with some small reservation; and Mr. Mocatta suggested that the Bill should be divided into two parts, one for winding up, and one for the establishment of the new company.

The Chairman said, that the object of the directors was solely to carry out the wishes of the proprietors; but it appeared that among the latter there was considerable difference of opinion. This might be done:—If, in the passage of the Bill through Parliament, it was found that much delay was likely to arise from the insertion of the trust clauses, it might be left to the discretion of the directors to withdraw the objectionable portion, and to proceed with that part to which consent was unanimous.

Mr. Mills thought that the arrangement should be put on record, and not left to mere understanding.

Mr. Ansell said, he had gone carefully through the Bill, and found that only 94 lines referred to the winding up, and all the rest related to the trust company. If, therefore, the Bill were divided into two, a very small Bill would be sufficient to authorise the distribution of the funds.

The Chairman said, it was too late to talk of dividing the Bill into two. If proprietors were not willing to place confidence in the pledge of the directors, the only course left was to take a vote. If they found the trust clauses likely to delay their Bill, they would withdraw them.

Mr. Boothby (Director) said, that the resolution of last year empowered the directors to bring in only one Bill, and they had endeavoured to reconcile the interests of the majority with those of the minority. Delay had been much alluded to, but he believed there was a good deal of exaggeration on that subject. He had consulted the Parliamentary agents, and had been informed that the Bill might become law within two months after Easter. Would they then, to avoid this delay, encounter the risk and expense of proposing two new Bills, especially as, if one proprietor dissented, he must get his share of the assets?

Mr. Parnell said, that the directors had no duty but to look after the affairs of the South Sea Company. This was a new project, and the proprietors were to be made the dupes of a minority. Perhaps the learned gentleman was aware that if his (Mr. Parnell's) amendment were lost, he might step over in the morning to Lincoln's Inn and get an injunction restraining the directors from moving a step. He had taken very high legal advice, and he understood there was not the shadow of a doubt but that if he filed a Bill, an injunction would issue to prevent the directors

doing anything without the consent of the South Sea Company.

Mr. Boothby cited several cases to show that in cases like the present the Court of Chancery would not grant an injunction.

The amendment was then put and lost, the numbers being—for, 19; against, 29.*

Mr. Ansell moved an amendment dividing the Bill into two, and giving precedence to the winding up portion.

Mr. Maude seconded the amendment, which was lost, the numbers being 18—26.*

Independently of the objections to this Arrangement and Trust Bill on public grounds, many of the Proprietors of the South Sea Stock themselves have great reason to complain that the Directors, in endeavouring to monopolise the administration of private trusts, are delaying the winding up of the affairs of the South Sea Company, and preventing the proprietors from the receipt of their money.

Amongst other provisions is the following very extraordinary one, affecting injuriously the holders of South Sea Stock:—

"That if any proprietor shall signify his desire to withdraw from the company [in other words to repudiate the Trust scheme], he shall not, after giving such notice, be entitled to attend any Court of Proprietors notwithstanding he shall not have received his share of the assets."

The attempt made last Session to obtain the trust powers, delayed the settlement of the affairs of the company; and a still further delay has taken place in the present Session, for if the Bill had been shaped with reference only to the company's own affairs, it might have received the Royal Assent a month ago.

NOTICES OF NEW BOOKS.

Commentaries on Universal Public Law.

By GEORGE BOWYER, Esq., M.P.,
D. C. L., Barrister-at-Law. Stevens;
Ridgway, 1854. Pp. 387.

THE learned Author of these Commentaries is already well known as a commentator on the Constitutional Law of England and on the Modern Civil Law, and as having been Reader before the Honourable Society of the Middle Temple.

Mr. Bowyer treats in the present work with great learning and ability of the origin and foundation of Law—Primary and Secondary Natural Law—the Nature and

* The majority included the directors present at the meeting, about 12 in number.

Spirit of Laws: Immutable Laws, Arbitrary or Positive Laws, and the Legislative Power—Nature of Public Law, Temporal and Spiritual—Diversity of Law and Political Institutions and the Conflict of Laws—Civil Societies or States—the Sovereign Power—the Judicial Power—Civil Governments—Compound States or Systems of States—Public Law of Things.

The Author's object has been to explain the origin and structure of universal human society and of the different kinds of communities into which it is divided; and thus to show the system and principles on which the world is governed and regulated. He commences with an exposition of the origin and foundations of Law; next the plan of Society on the foundation of the two great primary Laws on which all others depend. Then comes an explanation of the nature and spirit of Laws and their different kinds. This investigation includes the most essential parts of the government of mankind and the connection of Public Law with universal Jurisprudence.

We must forbear noticing those parts of the work which are of a political bearing, or do not relate to the Laws and Constitution of Great Britain; but must extract the following remarks on *Public Law* :—

"At a time like the present, when civil government seems so precarious in a great part of Europe, and the institutions of human society are everywhere, ingeniously and indefatigably misrepresented for revolutionary purposes, it behoves all those who have any share in making or administering laws, to be well grounded in the soundest doctrines of Public Law, whereby they may meet this mischief and prevent the successful diffusion of those dangerous theories, and at the same time discern changes which may be safely and advantageously made. To lawyers the study of universal Public Law must be especially and deeply important. A slight knowledge of the reports suffices to show how often the Law of Nations, and other branches of Public Law, are resorted to in the administration of justice. I refer to the Common Law and Equity Reports, for it is superfluous to say anything of the Admiralty Reports, and especially of Lord Stowell's decisions.

"In *Corn v. Blackburn*, Dougl. 619, Mr. Law, afterwards Lord Ellenborough, arguing in an action of assumpsit, before Lord Mansfield, cites Grotius and refers to the question agitated by Quintilian and commented on by Pufendorf, regarding the instrument of obligation from the Thebans to the Thessalians, found by Alexander the Great upon taking Thebes.

"In the case of the *Duke of Brunswick v. The King of Hanover* (6 Beav.), the most abstruse doctrines of Public Law regarding the

immunities of a sovereign prince in a foreign country were considered.

"And in the older books, the case of Monopolies (11 Rep. 85) is discussed on grounds of Public Law. And so *Calvin's case* (7 Rep. 1) is full of points of Public Law, as, for instance, when it is held that the highest and the lowest dignities are universal; for, if a king of a foreign nation come into England by leave of the king of this realm, he shall sue and be sued by the name of a king, for he is a king here, whereas a foreign duke or other nobleman has no such privilege, but is a commoner here.

"The multitude of cases wherein this kind of learning has been used in the Courts of Common Law and Equity, renders any further reference to them unnecessary here.

"With regard to our treatises and text books, Fortescue, in his work *De Laudibus Legum Anglie*, enters, especially in the tenth and following chapters, into disquisitions on the first origin of kingdoms and nations and other questions of Public Law,—citing St. Thomas Aquinas, *De Regimine Principum*, and St. Augustine, *De Civitate Dei*. And Blackstone's Commentaries are full of luminous discussions of the same nature. Lord Hale, in the tenth chapter of his pleas of the Crown, expounds the Law of Allegiance, not only with English authorities, but referring also to the Law of Nations. And I need scarcely remind the reader of Butler's note to Co. Litt. 261 a, on the *Jus Maris*, where he learnedly discusses the celebrated dispute of Selden and Grotius on the liberty of the seas, and Bynkershoek's treatise on the Rhodian Law."

Mr. Bowyer holds the opinion that the study of Public Law ought to form part of our system of Legal Education; and he contends that the present prospects of the Legal Profession render this proposition still clearer. The remarks on the consequences of extending the jurisdiction of the County Courts are very important.

"What" (he says) "will be the ultimate effect of the new County Courts on the administration of justice, and what the precise result of the changes which they are directly or indirectly bringing about, it may at present be difficult to say with much confidence. But this new form of judicial polity must in all probability not only break that system of concentrating the Bar in London, which was believed to conduce so much to its dignity and importance, but in divers ways diminish its emoluments. That this is a severe trial to the Legal Profession, not only individually but as a body, no one can deny. Superficial observers may perhaps say, that this is of no consequence to any one but to lawyers, and that the change must be one of unmixed advantage to the nation at large. But whoever considers that the great leading principle of our constitution is government according to law,—and that 'the Common Law is the greatest inheritance that the

king and the subject have,' must perceive how deeply important is the maintenance of that body from whom the Judges of the land are selected, and who with them are entrusted with the administration of the law.

"It is impossible to doubt the value of those reforms having for their object the cheap and speedy administration of justice; but, like other inventions of human wisdom, they are not unaccompanied with certain dangers of inconvenience. And those dangers must be met, not only for the sake of the Legal Profession, but for the love of our country. If ever a time should come when the Bar of England has fallen into a vulgar mediocrity, with no more learning than is necessary to earn a daily subsistence, unadorned by great legal science, dignity, and independence,—then the constitution of this country will be in imminent peril. And this may come to pass, unless care be taken to provide a remedy against the circumstances of the times just adverted to, by raising as high as possible the standard of legal education.

"Barristers will probably not in future make very great and rapid fortunes, and so be the founders of powerful families among the landed aristocracy. But this need not necessarily lead to the decay of our order. In the first of the celebrated letters of Camus on the Profession of an Advocate, he tells the young candidate that the exercise of that profession leads rather to honour than to fortune; and yet at the time when he wrote, the French Bar was in a high state of importance; and this shows that the diminution of professional emoluments need not necessarily be prejudicial to the status and public utility of the Bar. But that diminution must be counterbalanced by an increase of learning.

"In future lawyers must fit themselves, not merely to earn their bread by the practice of the law in that particular branch which they especially follow, but they must apply themselves to the general study of the law in all its branches with a more comprehensive spirit, and thereby not only enlarge their professional sphere of knowledge, but also qualify themselves to perform the duties of legal statesmen in Parliament, and in the general business of the country. For this purpose they must extend their learning, so as to embrace the whole range of the legal science; and such is the wonderful harmony of Universal Jurisprudence, and the connection of all its parts, that they will find even their special cultivation of certain branches of Law facilitated by the study of the science as a whole."

ATTORNEYS' CERTIFICATE TAX.

PETITION OF THE METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THIS petition, which was presented by Mr. Mullings, sets forth:—

"That the petitioners are subjected to the payment of an Annual Certificate Duty, while

no similar tax is levied upon any other profession, and from which even the other branch of the Legal Profession is exempted.

"That the petitioners cannot but view a tax thus levied exclusively upon their Profession as partial and unjust.

"That the tax was originally not intended to be a permanent one, but was merely imposed as a temporary means of supplying an anticipated deficiency in other sources of revenue.

"That the amount of revenue derived from this tax is comparatively insignificant, while at the same time it presses heavily and unequally upon the junior members of the Profession, and is now more severely felt in consequence of the emoluments of the Profession having been considerably reduced by the recent changes in the law.

"That other changes in the law and practice of the Courts are contemplated, which are likely still further to diminish the emoluments of the petitioners, while the heavy Court fees still continue to form a very considerable item in their disbursements, and that therefore they have additional claims to be relieved from the payment of the tax.

"That the petitioners are not exempted from the payment of any of the taxes levied upon other classes of her Majesty's subjects.

"That, notwithstanding the great increase in the value of almost all necessary articles of consumption, the petitioners are restricted to a fixed scale of charges, while such restriction is extended to no other trade or profession.

"That, as the protest which the petitioners feel bound to make against this tax is founded upon the fact that it is partial and unjust in its nature, much more than upon its actual amount, the petitioners cannot regard the partial remission which was made by her Majesty's Government last year as any reason why they should relax in their endeavours to obtain its total repeal; but that, on the contrary, they regard that remission as only a small instalment of justice, as an acknowledgment that the tax is in itself indefensible, and therefore as an additional motive to the petitioners to persevere in bringing their claim to the attention of your honourable house."

The petitioners therefore pray that they may have the benefit of the earliest possible remission of taxation which shall be found consistent with the due support of the public revenue.

(Signed) "E. S. BAILEY, *Chairman.*
"WILLIAM SHAEN, *Secretary.*"

GENERAL AND LEGAL EDUCATION.

To the Editor of the Legal Observer.

SIR,—On behalf of the Candidates for Examination, I venture to make a few remarks with respect to the proposed extension of power to be given to the Examiners by grafting literary and scientific attainments to those of legal qualifications.

In the first place, the proposal seems open to objection on the ground of its universality, —for unless we can all become modern Crichtons, the latitude of the examination forbids any preparation or training for it. If Candidates ought to be subjected to answer in any subject of the wide world of literature and science, then I respectfully submit that the Board of Examiners are not fit and proper persons for such a purpose. The members have passed no such ordeal themselves, and the Profession, therefore, would have no faith in the propriety of their decisions upon matters which they cannot be assumed to be qualified. With respect to strictly legal points, it is of course otherwise; but, if the proposal for literary and scientific qualification be persisted in, many may think that the Examination should be entrusted to a Professor of a College, or even a Schoolmaster, rather than to the Board of Examiners.

In the next place, it may be contended that the time given to subjects foreign to the law is not only consumed at the expense of legal studies, but also tends to supersede legal qualifications, for how seldom it is we find a literary and scientific man a good lawyer. Lord Coke says (I quote from memory), "The Ladye Law is a jealous mistress, and loveth to lie alone." Indeed, it is so with every profession; and I contend that it would be as unreasonable to impose upon a medical student, or a candidate for priest's orders, the *sine quâ non* of literature and science, as to attempt doing so with respect to a law student.

I shall not, however, be surprised, after the present proposal, to find both divinity and medicine sought to be tacked to the many qualifications which seem at the present day to be considered essential before the admission of an attorney. J. E.

SIR,—I was articled early in the year 1852. Little more than twelve months after the execution of my articles the Chancellor of the Exchequer announced his fiscal alterations, whereby he reduced the stamp upon Articles of Clerkship from 120*l.* to 80*l.* I felt that to be a hardship, but offered no word of complaint, though I conceive it would be only matter of simple justice in the Chancellor to remit the whole or part of the fees payable on admission in favour of persons so circumstanced. But in addition to this, I see it is contemplated to institute an examination of candidates for admission in literature and science. There can be no earthly objection to such a rule in the abstract, but it would be nothing less than an act of injustice to apply it to those who like myself entered upon their articles upon the faith of being subjected to a legal examination only. If such an examination is intended to impose a restraint upon the facilities for entering the Profession afforded by the 80*l.* stamp, let it in common honesty apply only to those who are benefited by the reduction. W. R.

POINTS IN EQUITY PRACTICE.

PROCEEDINGS BY CLAIM INSTEAD OF BY BILL.

THE following observations of Vice-Chancellor Stuart in the case of *Rawlings v. Dagleish*, 1 Smale & Giffard, 76, are important, as pointing out the practice as to determining whether to proceed by bill or by special claim :—

"The claim in this case is filed for the specific performance of an agreement for a lease of mines, and it asks very distinctly that the Court may direct the specific performance of an agreement alleged to be embodied in a memorandum, dated Jan. 5, and in a letter dated Feb. 24, 1851. This appears at first sight an extremely simple matter; but the plaintiff, before he filed this claim, must have known that his case, instead of being simple, was one of extraordinary complication. On the most superficial view, and even on the plaintiff's own statement, the agreement is for the lease of a mine to the defendants, in connexion with another lease of an adjoining mine to be granted by a third party. The arrangement necessary to carry into effect such an arrangement, including, as it does, a stipulation for a lease of another mine to be obtained by the plaintiff from the owner of an adjoining colliery—not a party to the alleged agreement—was necessarily of a complicated nature. In most cases relating to leases of coal or iron mines, there is considerable nicety and complication in the terms of the lease. So far as I can form an opinion of the question at issue between the parties, the defendants are bound by the agreement. But, when I am called upon to decree a specific performance of this agreement embodied in the memorandum and the letter of the 24th Feb., I must look to ascertain whether the Court has the way cleared, so as to be able to work out such a decree, if pronounced. This agreement contains not only a reference to the lease of an adjoining mine, to be obtained from a third party; but there is also an express stipulation for what are called 'mutual powers.' If the plaintiff had resorted to the well-settled course of practice, instead of this unfortunate attempt at a short cut by way of special claim; and by interrogatories founded on the allegations in a bill, had extorted from the defendants an answer as to the matters in dispute, the Court might have seen its way to refer it to the chief clerk, or to the conveyancing counsel, to settle the terms of the lease according to the agreement. But how can the Court pursue that course, when, up to the hearing of the claim, there is nothing to indicate the situation in which the parties are, with respect to the lease to be obtained, and to the mutual powers over the adjoining mine, which form an integral part of the agreement. It is impossible for the Court to settle a lease which is to contain 'mutual powers,' without knowing the posi-

tion of the parties by and between whom they are to be exercised.

"Finding myself unable to grant any relief upon this claim, I shall take care not to prejudice the right of the plaintiff to proceed by what may be a more effectual way—if not to get a decree for specific performance,—at all events to have justice done on this agreement. Neither will I prejudice the right of the defendants to every legitimate ground of defence. Upon this claim it is impossible to refer it to the conveyancing counsel to settle a lease, without leaving the terms completely uncertain on essential points. I might, indeed, if the facts justified that course, treat the lease by the plaintiff as independent of the lease of the adjoining mine. But, how can I say that it is independent, when the defendants would and do contend, with some probability to justify it, that they would not have taken the one lease without the other?

"I feel myself unable, as the case now stands, to direct the specific performance of the agreement; and I cannot but lament, that an invitation is held out to suitors to pursue the short road by way of special claim—an invitation, accompanied by a threat, that, if a bill be resorted to in a matter capable of adjudication on a claim, the plaintiff shall or may be visited with the costs of the suit. In this case, the defendants might possibly have adopted such a line of defence to the claim as to relieve the Court from all difficulty in determining the question between the parties, and might have presented the matter in such a shape as to have enabled the Court, upon special claim, to decree specific performance of the agreement. But the mode of proceeding adopted by the plaintiff has enabled them to resort to a mode of defence, which is a legitimate mode, according to the rules of practice of this Court, and which has rendered the decision of the real question on this claim impossible.

"I shall dismiss this claim without costs; but without prejudice to the plaintiff's right to take such proceedings as he may be advised to establish his agreement."

NOTES ON RECENT STATUTES.

EQUITY JURISDICTION IMPROVEMENT ACT.

PRACTICE UNDER S. 58, AS TO DISSOLVING INJUNCTION.

THE common injunction was obtained before the 15 & 16 Vict. c. 86, s. 59, came into operation; and on the answer being put in, held that the proper course was to give notice to dissolve the injunction. *Langford v. May*, 16 Beav. 32.

SUIT TO REDEEM.—PARTIES UNDER S. 42, R. 9.

The trustees of the Union Building Society Club had mortgaged some of its property to

the defendant, and it was afterwards agreed that the trustees should sell the property, pay off the mortgage, and divide the residue among the shareholders. A claim was then filed for redemption by the plaintiffs, on behalf of themselves and all subscribers to the society, except the defendants. An objection, that all the subscribers should have been made parties, was overruled, and held, that under the 15 & 16 Vict. c. 86, s. 42, r. 9, the trustees of a mortgage represent the *cestuis que trustent* sufficiently to protect the mortgagor, but where the surviving trustees or the representatives of the trustees alone are parties, the Court requires the *cestuis que trustent* to be also represented, in order to secure the due application of the trust property. *Stansfield v. Hobson*, 16 Beav. 189.

LAW OF COSTS.

OF EXECUTOR IN ADMINISTRATION SUIT.—SET-OFF.

IN a suit against the sole surviving executor for the administration of his testator's estate, and charging him with interest on balances remaining uninvested, the *Master of the Rolls* held, that he was entitled to his costs and to be charged with interest at 4 per cent., and said, "The case of *Samuel v. Jones*, 2 Hare, 246, expressly decides, that the Court will not set-off the costs incurred by an executor subsequent to his bankruptcy, against his debt which accrued previous to the bankruptcy. I cannot distinguish these two cases. I am of opinion that the claim substantiated in this suit was a debt previous to his bankruptcy; and though it could not be proved, still a claim might have been made, and a portion of the assets set aside to answer it." *Cotton v. Clark*, 16 Beav. 134.

CERTIORARI.—APPEAL FROM POOR-RATE.

On appeal against a poor-rate, the Sessions, subject to a special case, reduced the assessment, and awarded costs to the appellants, deciding some of the points raised on the appeal in favour of the appellants, and some for the respondents. The respondents claimed, that the points decided in favour of the appellants should be stated in the special case, and they were so stated, but the respondents had determined not to dispute the judgment of the Sessions. This Court affirmed the judgment of Sessions on all the points. The Court held that

the respondents were not entitled to their costs, under the 5 Geo. 2, c. 19, s. 2, as per Lord Campbell, "the *certiorari* under the circumstances of the case must be considered as having been prosecuted by both parties; and consequently neither is entitled to costs." *Regina v. Southampton Dock Company*, 17 Q. B. 83.

LAW OF ATTORNEYS AND SOLICITORS.

EVIDENCE OF RETAINER BY CLIENT.— LONDON AGENT.

THE plaintiff had, by letter signed by her, directed Mr. S., a country solicitor, to file a bill in Chancery, and his London agents, Messrs. W. & G., accordingly filed such bill. On motion to strike out her name, with costs to be paid by Messrs. W. & G., the *Master of the Rolls* said,—“I am satisfied that an authority was given by the plaintiff to Mr. S. That is distinctly proved by the exhibit and three witnesses.

“The next point is, that although an authority might have been given to Mr. S., yet that none was given to Messrs. W. & G. If such an objection were allowed, the consequence would be, that a client could not employ a country solicitor in a suit, unless such solicitor came up to London to conduct it in person. It is the ordinary, and recognised practice of country solicitors to employ a London agent. All that is required is, that he should appear in the bill to be acting as agent.” Leave was then given for the plaintiff's name to be struck out, but on her giving security for costs, and paying the costs of the application. *Solley v. Wood*, 16 Beav. 370.

EASTER TERM EXAMINATION.

THE Examiners appointed for the examination of persons applying to be admitted Attorneys, have fixed *Tuesday*, the 2nd May, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, in order to take the examination.

The Articles of Clerkship and Assignment, if any, with answers to the questions as to due service, according to the regulations approved by the Judges, must be left on or before *Saturday*, the 22nd instant, at the Law Society's Hall.

Where the articles have not expired, but will expire during the Term, the Candidate may be examined conditionally; but the articles must be left within the first seven days of Term, and answers up to that time. If part of the Term

has been served with a *Barrister*, *Special Pleader*, or *London Agent*, answers to the questions must be obtained from them, as to the time served with each respectively.

A Paper of Questions will be delivered to each Candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Courts. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each Candidate is required to answer *all* the Preliminary Questions (No. 1); and also to answer in *three* of the other heads of inquiry, viz.:—*Common Law*, *Conveyancing*, and *Equity*.

The Examiners will continue the practice of proposing questions in *Bankruptcy* and in *Criminal Law* and *Proceedings before Justices of the Peace* in order that Candidates who may have given their attention to those subjects, may have the advantage of answering such questions, and having the correctness of their answers in those departments taken into consideration in summing up the merit of their General Examination.

Under the new Rules of Hilary Term, 1853, it is provided that every person who shall have given notice of Examination and Admission, and “who shall not have attended to be examined, or not have passed the Examination, or not have been admitted, may *within one week after the end of the Term* for which such Notices were given, *renew* the Notices for Examination or Admission for the *then next ensuing Term*, and so from time to time as he shall think proper;” but shall not be admitted until the last day of the Term, unless otherwise ordered.¹

LIST OF LONDON COMMISSIONERS.

Ashurst, Wm. Henry, jun., 6, Old Jewry.
Brewer, Thomas Gibson, 3, Philpot Lane.
Fry, Peter Wickens, 80, Cheapside.
Hunter, Wm., 17, Bloomsbury St., Bedford Square, and 28, Mecklenburgh Sq.
Hopwood, John Stephen Spindler, 47, Chancery Lane.
Nelson, Wm. Benford, 11, Essex Street.
Sadgrove, Wm. Henry, 64, Mark Lane, and Greenwich.
Steward, Samuel, 59, Lincoln's Inn Fields.
Taylor, John Henry, 15, South St., Finsbury Square.
Trinder, Wm. Henry, 1, John St., Bedford Row.
Vincent, John, 4, Inner Temple Lane.

¹ This Rule was made in order to avoid the practice of giving double notices.

NOTES OF THE WEEK.

LONDON COMMISSIONS IN CHANCERY.

COMMISSIONS to administer oaths will, in future, only be made out at such times as the Lord Chancellor may be sitting at *Lincoln's Inn*. The whole of the certificates and necessary papers being kept there, it would be attended with much inconvenience to remove them occasionally either to the House of Lords or the Lord Chancellor's residence.

LAW UNION INSURANCE OFFICE.

This new Life and Fire Insurance Company, we are informed, has commenced business. Our correspondent of last week, "An Assured," is referred to our advertising columns, where he will find that his suggestion has been anticipated. Not only a *Register* will be kept of assignments or mortgages of policies, but an *acknowledgment* given of the receipt of the notice.

SOUTH SEA TRUST BILL.

Several petitions have been presented to the House of Lords against this Bill. One from the Incorporated Law Society; another from the Attorneys and Solicitors of the Superior Courts; and a third from a Proprietor of South Sea Stock.

Notice has been given for the 2nd reading on Thursday, 27th April.

PROCEEDINGS IN PARLIAMENT RELATING TO THE LAW.

House of Lords.

Second Common Law Procedure, 1854.—Lord Chancellor. In Select Committee.

Declaratory Suits.—Lord Brougham. For 2nd reading, put off *sine die*.

Arbitration Law Amendment.—Lord Brougham. In Select Committee.

Dishonoured Bills of Exchange.—Lord Brougham. In Select Committee.

Conveyance of Real Property Act Amendment.—Lord Brougham. For 2nd reading.

South Sea Company. For 2nd reading, April 27.

Income Tax.—Lord President. In Committee, May 1.

Inspector of Nuisances.—Lord Lyttelton. For 2nd reading.

Metropolitan Building Act further Amendment.—Viscount Hutchinson. For 2nd reading.

Augmentation of Benefices.—Bishop of London. In Committee, April 27.

Bankruptcy and Insolvency (Scotland).—Lord Brougham. In Committee, April 27.

Leasing Powers (Ireland).—Viscount Hutchinson. In Select Committee.

Landlord and Tenant (Ireland).—Viscount Hutchinson. In Select Committee.

Law of Landlord and Tenant Consolidation (Ireland).—Lord Somerhill. In Select Committee.

Tenants' Improvements' Compensation (Ireland).—Duke of Newcastle. In Select Committee.

Adjourned to Thursday, April 27.

Bills passed.

Testamentary Jurisdiction.—Lord Chancellor.

Registration of Bills of Sale.—Earl of Harrowby.

Commons' Inclosure.—Lord Stanley.

County Court Extension Act Explanation.—Lord Brougham.

House of Commons.

County Court Extension Act Amendment. In Committee, May 3.

Judgment Execution.—Mr. Crauford. In Select Committee.

Witnesses.—Mr. J. Butt. For 2nd reading, May 1.

Extension of Cornwall Stannaries' Court.—Mr. Collier. For 2nd reading, May 3.

Total repeal of Punishment of Death.—Mr. Ewart.

Criminal Procedure.—Mr. Aglionby. For 2nd reading, May 5.

Appointment of Public Prosecutors.—Mr. John G. Phillimore. For 2nd reading, April 27.

Police (England and Wales).—Viscount Palmerston. *After Easter*.

Registration of Bills of Sale.—In Committee, May 17.

Mercantile Laws of England and Scotland.—Mr. B. Phillimore.

Manchester Court of Record. Consideration of report; April 27.

Bribery, Treating, and Undue Influence at Elections.—Lord John Russell. In Select Committee.

Trial of Election Petitions and into Corrupt Practices.—Lord John Russell. In Select Committee.

Vacating of Seats of Members.—Lord John Russell. For 2nd reading.

Practice at Elections and Bribery, &c., Prevention.—Sir F. Kelly. In Select Committee.

Oaths of Allegiance, &c.—Lord John Russell. For 2nd reading, May 8.

Abolition of Property Qualification of Members, No. 2.—Mr. Murrough. For 2nd reading, May 10.

Abolition of Members' Privilege from Arrest.—Mr. Murrough.

Executor and Trustee Society.—Mr. Headlam. Reported.

Episcopal and Capitular Estates' Management.—Marquis of Blandford. For 2nd reading, May 17.

Church Building Acts' Amendment.—Sir Wm. Molesworth. Re-committed, April 27.

Apportionment of Rent, &c.—Sir William Molesworth.

Friendly Societies' Regulation.—Mr. Sotherton. Re-committed, May 10.

Medical Practitioners' Registration (No. 2).—Mr. Brady. In Committee, May 3.

Merchant Shipping.—For 2nd reading, May 4.
 Declarations in lieu of Oath.—Mr. Pellatt. For 2nd reading, May 3.
 Property Disposal.—Mr. Whiteside. For 2nd reading, May 24.
 Mortmain.—Mr. Headlam. For 2nd reading, May 3.
 Drainage of Land.—Mr. Ker Seymer. For 2nd reading, May 17.
 Real Estate Charges.—Mr. Locke King. For 2nd reading, May 10.
 Crim. Con.—Mr. Bowyer. For 2nd reading, May 3.
 Registration of Births, &c., in Scotland.—Lord Elcho. For 2nd reading, May 12.
 Highways (Ireland).—Mr. M'Mahon.
 Arrest of Absconding Debtors (Ireland).—Mr. Davison. May 3.

Bankruptcy Law Consolidation (Ireland).—Mr. Cairns. For 2nd reading, May 3.
Adjourned to Thursday, April 27.

Bills negatived or withdrawn.

Representation of the People.—Lord John Russell.
 Succession to Real Property on Intestacy.—Mr. Locke King.
 Law of Simony.—Mr. R. Phillimore.
 Parish Vestries.—Mr. Evelyn.
 Uniform Assessment.—Mr. Peto.
 Law of Settlement, Removal and Chargeability of the Poor.—Mr. Baines.

Bills passed.

South Sea Company and Trusts.
 Commons' Inclosure.—Mr. Fitzroy.
 Income Tax.—Chancellor of the Exchequer.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

In re Warton. Feb. 10, 1854.

LUNATIC.—PAYMENT OUT OF COURT OF PROCEEDS OF SALE OF REAL ESTATE TO FELON'S HEIR-AT-LAW.—CLAIM OF CROWN.

An order was made on petition for payment out of Court to the heir-at-law of a person, who had been convicted of felony, and had died while under sentence of transportation, and who was heir-at-law to a lunatic so found by inquisition, of the balance of the proceeds of sale of real estate, ordered to be sold, and the claim of the Crown was disallowed.

It appeared that upon the death of this lunatic, so found by inquisition, there was a fund in Court, the balance of the proceeds of certain real estate ordered to be sold, and that his heir-at-law had been convicted of felony and sentenced to transportation, had since died. This petition was therefore presented by his heir-at-law for payment of the fund.

A. J. Lewis in support, cited the 9 Geo. 4, c. 78, s. 2.

Wickens for the Crown, *contra*.

The Lords Justices said, that the fund was, under the section cited, impressed with the character of realty, and there had been no election by the parties to take it as personalty, and the order was made as prayed.

Master of the Rolls.

Ex parte Haberdashers' Company. March 27, 1854.

PETITION FOR INVESTMENT OF PURCHASE-MONEY OF CHARITY LAND IN REDEMPTION OF LAND TAX.—CONSENT OF COMMISSIONERS.—ENTITLING.

A petition for the investment of the purchase-money of land taken by a railway company in the redemption of the land tax on other land held on similar trusts for a charity, was directed to stand over in order to ob-

tain the consent of the Charity Commissioners under the 16 & 17 Vict. c. 137, s. 17, and to entitle the petition in the matter of Sir S. Romilly's Act.

Shapter appeared in support of this petition for the investment of the purchase-money of certain lands taken by the London, Brighton, and South Coast Railway Company in the redemption of the land tax on other land held on similar trusts for a charity.

Wickens for the Attorney General, *contra*, on the ground that the consent of the Charity Commissioners should have been first obtained under the 16 & 17 Vict. c. 137, s. 17, and also that the petition should have been entitled in the matter of Sir S. Romilly's Act (5 Geo. 3, c. 101).

The Master of the Rolls, accordingly directed the petition to stand over.

Vice-Chancellor Kildersley.

Bray v. Laycock. March 10, 1854.

MARRIED WOMAN.—EQUITY TO SETTLEMENT.—WHERE HUSBAND BANKRUPT.

*An order was made on petition for the settlement on a married woman of a fund in Court amounting to about 560*l.* where it appeared her husband, who was a bankrupt, had received 6,000*l.* of her money, and although his assignees objected that she refused to release her right of dower in certain land sold under the bankruptcy.*

This was a petition on behalf of a married woman, whose husband was a bankrupt, for the settlement on her of a fund in Court to which she was entitled as next of kin to a testator and amounting to about 560*l.* It appeared that the husband had received 6,000*l.* of her money.

Amphlett in support.

Wickens for the husband's assignees, *contra*, on the ground that the petitioner had refused to release her right of dower on certain real property sold in the bankruptcy.

The Vice-Chancellor said, that even if the

petitioner obtained her dower, the settlement of the fund was not such for her, and it would therefore be settled as prayed.

Vice-Chancellor Stuart.

Hewitson v. Todhunter. Feb. 24, 1854.

AFFIDAVIT, FILING.—AUTHENTICATION OF EXHIBIT.

A motion was refused for a direction on the Clerk of Record and Writs to file an affidavit, where it appeared the paper writing annexed, and purporting to be a true copy of a deed thereby sought to be proved, was not authenticated by the usual form of exhibit, but was merely attached thereto by a ribbon under the seal of the British consul abroad, before whom the affidavit was sworn.

In this case it appeared that an affidavit was tendered at the office of the Clerks of Records and Writs to be filed, which was sworn before the British consul at Philadelphia, in the United States, in order to prove a deed, but that the usual form of exhibit was omitted stating the paper writing annexed, and which purported to be a true copy of the deed in question; was the paper writing referred to in the affidavit, but that it was only attached thereto by a ribbon under the consular seal. The clerk having refused to file the affidavit, this motion was

now made for a direction to have the same filed.

C. T. Simpson in support.

The Vice-Chancellor said, that as the exhibit was not properly authenticated the affidavit could not be filed, and the motion was accordingly refused.

Vice-Chancellor Stuart.

Rees and others v. Rees. Feb. 9, 1854.

AUTHORITY TO USE PLAINTIFF'S NAME.—ASSIGNMENT.—COSTS.

On a motion to strike out, with costs to be paid by the solicitor, the name of a plaintiff, it appeared that there was an assignment by such plaintiff authorising the assignee to sue in his name. The motion was refused with costs, on the co-plaintiff showing cause upon the death of the solicitor after notice of motion.

Boyle moved to strike out, with costs to be paid by the solicitor, the name of one of the plaintiffs in this suit, on the ground that its insertion was unauthorised.

J. T. Wood for the co-plaintiffs, the solicitor having died after the notice of motion, contra, there being an assignment by such plaintiff authorising the assignee to sue in his name.

The Vice-Chancellor accordingly refused the motion, with costs.

ANALYTICAL DIGEST OF CASES,

SELECTED AND CLASSIFIED IN ALL THE COURTS.

Privy Council.

APPEALS.

ARBITRATION.

Reference where married women interested in real estate.—Plea of award.—Award upon a submission to arbitration, respecting freehold estates and interest in land in Jamaica. Some of the parties to be bound by the reference being married women interested in the real estate, it was held by the Judicial Committee (reversing the decree of the Court below), that such award was invalid, by reason of the coverture of the parties whose interests could not be bound by such a reference.

Plea setting up such award in bar to a bill for an account overruled. *Strachan v. Dougall*, 7 Moore, P. C. 365.

And see *Time of Appealing*.

BOMBAY CHARTER.

Jurisdiction of Admiralty Court.—Maritime causes.—The Bombay Charter (December, 1823) establishes the admiralty jurisdiction of the Supreme Court, "as the same is used and exercised in that part of Great Britain called England, together with all and singular their incidents, emergents, and dependencies annexed and connexed causes whatsoever; and to proceed summarily therein, with all possible despatch, according to the course of our admiralty in that part of Great Britain called

England." Held, upon construction of such charter, that the rules and practice of the High Court of Admiralty in England, prevail and govern the proceedings in the Supreme Court at Bombay, in maritime causes. *Loughnan v. Haji Joosub Bhulladina*, 7 Moore, P. C. 373.

And see *Time of Appealing*.

BOTTOMRY BOND.

Authority of master to make.—Residence of owner.—Agent.—The authority of the master of a ship to pledge by bottomry for the purpose of raising money for the absolute necessities of the ship, only arises when he cannot obtain the necessary advances upon the personal credit of the owner; and such power to raise money by bottomry is vested in the master, although the owner resides in the same country, provided there is no means of communication with the owner, and the exigency of the case requires it.

A bottomry bond was granted in New York by the master of a ship, to obtain money for necessary repairs; the owner whereof was residing at St. John's, New Brunswick. A communication by electric telegraph existed between the two cities. The bondholder had previously acted as the general agent of the owner, and no intimation of the transaction was made by the master to the owner until after the execution of the bond.

Held, upon appeal (reversing the sentence of the Admiralty Court), that the master having the means of communication with the owner, no such absolute necessity existed as to authorise him to pledge the ship without communication with the owner, and the bond declared void.

Semble, the agent of the owner may take a bottomry bond as a security for advances made by him. *Wallace v. Fielden*, 7 Moore, P. C. 398.

Cases cited in the judgment: *La Ysabel*, 1 Dodson, 273; *Arthur v. Barton*, 6 M. & W. 158; *Jones v. Simons*, 2 Q. B. 425; *Stonehouse v. Gent*, 2 Q. B. 431.

COGNOVIT.

See *Trinidad*.

COLLISION.

See *Pilot Act*.

COSTS.

In a salvage cause, the Supreme Court of Bombay, by its sentence pronounced in March, 1849, dismissed the claim of the salvors. In the month of April following, the promovents moved for a rule nisi to show cause why the defendants should not pay their costs. This rule the Court refused. In August, in the same year, the promovents applied for, and the Supreme Court granted, leave to appeal to England from the principal sentence of March, 1849. No objection was taken to the competency of the appeal in Bombay by the respondents, nor was any protest against the right of appeal entered in England, but the respondents at the hearing objected to the reception of the same, contending that the appeal was perempted by the proceedings had in the month of April.

Held, that such objection was fatal, that the application for costs after the decision in the cause had the effect of absolutely perempting the appeal, so as to entirely take away from the Supreme Court the power of granting leave to appeal, as nothing could, after the proceedings in April, be done to restore the appeal from the principal sentence.

Costs of appeal, under the circumstances, refused. *Loughnan v. Haji Joosub Bhulladina*, 7 Moore, P. C. 373.

See *Patent 3, 4: Time of Appealing*.

DOMICILE.

Restoration of conjugal rights. — Plea of foreign law.—American subjects, born and domiciled in the state of Pennsylvania, contracted a marriage in that state, in the year 1831, being at the time members of the Protestant Episcopal Church in America. Afterwards, the husband was appointed rector of a church in the state of Mississippi, where he resided with his wife till 1835. At that time, the wife became a convert to the Roman Catholic faith. In 1836, both parties went to Rome, where they abjured the Protestant faith, and were formally admitted members of the Roman Catholic Church. They afterwards, in 1838, returned

to America, and resided in the state of Louisiana. In 1843, they again went to Rome, and upon the rescript and allowance of the Pope, on the joint petition of the husband and wife, the husband and wife (with his concurrence) took the vows of perpetual chastity and religious professions, the husband ultimately taking holy orders; and the wife entered into a religious house as a nun, taking the vows of poverty and obedience; whereupon they separated and lived apart. In 1846, they came to England; the husband became private chaplain in a Catholic family, and the wife the superioress of a religious community. In 1848, the husband recanted the Roman Catholic faith, and again became a Protestant, when he applied to his wife to return to matrimonial cohabitation, which she refused; whereupon he instituted a suit for restitution of conjugal rights, to which the wife pleaded as a bar that the rescript of the Pope, and the acts of the parties at Rome, had the force and effect of a judicial sentence of separation, *a mens et thoro*. The Judge of the Arches' Court rejected the allegation, on the ground that the facts pleaded would not, even if proved, constitute a bar to the husband's right to a sentence for restoration of conjugal rights. Upon appeal to the Judicial Committee, the allegation was admitted, and directed to be reformed, by pleading the law of Pennsylvania as applicable to the circumstances, in case the suit had been brought to adjudication there, and also the domicile of the husband at the time of the transactions at Rome. *Connelly v. Connelly*, 7 Moore, P. C. 438.

EXTENSION OF PATENT.

See *Patent*.

IN FORMA PAUPERIS.

Certificate of advocate. — Practice.—Before a party can be admitted to appeal in *forma pauperis* to the Judicial Committee of the Privy Council, from the Courts in Doctors' Commons, he must have a certificate of an advocate of the Bar of those Court, that he has a just and probable cause of appeal.

Upon such certificate, and taking the usual oath as a pauper, the surrogate may admit an appeal in *forma pauperis*. *Lait v. Bailey*, 7 Moore, P. C. 436.

MARRIED WOMAN.

See *Arbitration*.

PATENT.

1. *Extension of, where invention imported from abroad.*—The importer of an invention from abroad, is an inventor within the meaning of the Statute, 5 & 6 Wm. 4, c. 83, and entitled to apply for an extension of the term.

But the Judicial Committee will look with jealousy into the merits of the invention imported.

Application for an extension by the trustees of a joint-stock company (the assignees of the patentee) refused; the invention imported having been in common use in France, and no great risk or expenditure incurred by the pa-

tenee or his assignees in introducing it to the public. *In re Claridge's Patent*, 7 Moore, P. C. 394.

2. *Production of accounts on petition for extension.*—Application, under the Statute 14 & 15 Vict. c. 99, s. 6, by parties who opposed an extension of letters patent, for production and inspection of the petitioners' accounts previous to the hearing of the petition, refused with costs. *In re Bridson's Patent*, 7 Moore, P. C. 499.

3. *Costs of opposers where petition for extension abandoned.*—Costs given to all the opposers upon petitioners abandoning petition for an extension of letters patent, before hearing.

Where the petition is abandoned, it is not necessary that the opposers should serve the petitioners with notice of their intended application to the Court for costs of opposition. *In re Bridson's Patent*, 7 Moore, P. C. 499.

4. *Costs of opposition where petition for prolongation abandoned before hearing.*—On a petition for prolongation of letters patent, a day was fixed for the hearing. Objections were lodged against an extension. Before the hearing the petitioners abandoned the prosecution of the petition. In such circumstances costs of opposition allowed to opposer. *In re Hornby's Patent*, 7 Moore, P. C. 503.

PILOT ACT.

Owners' liability on collision, where occasioned by pilot.—The owners of a vessel having a duly licensed pilot on board are protected by the Pilot Act, 6 Geo. 4, 125, s. 55, from liability for damages solely occasioned by the fault of the pilot.

Aliter, if the blame is mutually imputable to the pilot, and the master and crew.

Where a collision was occasioned by the improper sailing and steering of a vessel, the exclusive act of the pilot, the owners of the vessel were held (reversing the judgment of the Court below) entitled to the exemption provided by the Statute 6 Geo. 4, c. 125, s. 55. *Pollak v. M'Alpin*, 7 Moore, P. C. 427.

Cases cited in the judgment: *Case of the Diana*, 4 Moore, P. C. 11; *Hammond v. Rogers*, 7 Moore, P. C. 160.

PRACTICE.

See *In Forma Pauperis*; *Trinidad*.

PRODUCTION OF ACCOUNTS.

See *Patent*, 2.

RES JUDICATA.

Demurrer.—*Effect of order not on record.*—A general demurrer, on the ground of the subject matter of the suit being *res judicata*, allowed to a suit brought in the Supreme Court of Bombay, by a party claiming certain property, which appeared by the statement in the bill to have been the subject of a previous suit in the same Court, in which the plaintiff had intervened by petition, and obtained some order, the nature and effect of which was not stated, and did not appear upon the record

then before the Court. *Mushadee Mahomed Cazzum Sherazee v. Meerza Ally Mahomed Shoostry*, 7 Moore, P. C. 382.

SALVAGE CAUSE.

See *Costs*.

SECURITY FOR COSTS.

See *Time of Appealing*.

SPECIFIC PERFORMANCE OF AGREEMENT.

Compensation for rights in waste lands.—Bill by a party claiming to represent the interests of certain proprietors of waste land, termed "Mirasidars," against the East India Company, for specific performance of an agreement alleged to have been entered into by them to grant compensation for the *mirasi* rights in certain lands taken possession of adversely by the Madras Government for public purposes. Upon appeal such bill dismissed, the Judicial Committee holding, that there was no evidence of any contract by the East India Company, to sustain a bill in a Court of Equity for the relief sought. *East India Company v. Nathambadoo Veerasawmy Moodelly*, 7 Moore, P. C. 482.

TIME OF APPEALING.

Leave after expiration of.—*Security for costs.*—Leave given to appeal, under circumstances, though the time limited by the Bombay charter had expired, and the decree of the Court below sanctioning the sale of real estate, the subject of the suit, had been partially acted on; the petitioner undertaking not to disturb the possession or title of the purchasers of any part of the property actually sold,—to give security for costs, and to abide by any order which the Judicial Committee might think fit to make, touching the matters in dispute. *In re Mushadee Mahomed Cazzum Sherazee*, 7 Moore, P. C. 391.

TRINIDAD.

Cognovit.—*Practice as to entering up final judgment on.*—According to the practice of the Supreme Court at Trinidad, since the passing of the ordinance, No. 5 of 1845, as regards cognovits, confession is signed by the defendant in the presence of his solicitor, and attached to the proceedings in the cause, and on application to the sitting Judge by the plaintiff's solicitor and production of the confession, and on appearance and consent of the defendant's solicitor, final judgment is entered up by the registrar.

A cognovit actionem, executed in 1846, was set aside by the Court at Trinidad, on the ground that the cognovit was not signed by the defendant in the presence of the Escribano of the Court according to the Spanish laws of 1534 and 1560: *Held*, on appeal, reversing the order setting aside the cognovit, that those laws did not apply to cognovits, and that the cognovit being executed according to the uniform practice of the Court since the introduction of the ordinance of 1845, was a good and binding instrument. *Colonial Bank v. Carabon*, 7 Moore, P. C. 412.

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SATURDAY, APRIL 22, 1854.  
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PROFESSIONAL REMUNERATION.

LORD BROUGHAM'S CONVEYANCING BILL. —PROPOSED NEW TAXING OFFICER.

THE mode of remunerating the Practitioners of the Law for their services continues to engage the attention, not only of the Profession itself, but of the Legislature and the Public. Lord Brougham has again introduced a Bill bearing materially on this difficult subject. The Profession has reason to look to his lordship for a just and friendly consideration of the true grounds on which the question ought to rest, for it will be recollected that his lordship, on giving his evidence before the Select Committee of the House of Lords on the Masters in Chancery Primary Jurisdiction Bill, thus strongly expressed his opinion:—"That one of the two great causes of delay and expense in Chancery was the faulty mode of remunerating professional men, solicitors especially, but he did not except counsel. This opinion was the result of his whole professional experience and observation, and it was not confined to proceedings in Equity. The subject (his lordship added) was one of great difficulty, but it was of yet greater importance; and he felt assured, that whatever other changes were effected to improve the system, whether of Equity or Common Law, a large proportion of evil would remain, unless this difficulty were grappled with and overcome."

Lord Langdale, also, repeatedly in his judgments on questions of solicitors' costs, said, that "the rules as to the costs allowed to solicitors were on a most unsatisfactory footing. They continued on that footing because nobody had been able to suggest any mode of taxing the costs in a more satisfactory manner." As an instance, his lordship said, "that solicitors were allowed

a very small remuneration for obtaining instructions for a Bill, which often occasioned them a degree of trouble and expenditure not at all commensurate with the allowance made to them."

The Committee of the Incorporated Law Society in their Report on Equity Practice, dated the 2nd December, 1851, urgently state, that "No reform in the practice of the Courts can be complete or satisfactory, unless the subject of Equity Costs be examined and settled upon just and intelligible principles. They observe, that there are inconsistencies in the scale of allowance which work injustice both to the suitor and the solicitor, and if the improvements suggested in the Report be adopted, it will be absolutely necessary that the whole system of Professional Remuneration in Equity Proceedings should be remodelled."

The Committee refrained at that time from reporting on this matter in detail, "because they thought that to do so would be premature, and because they felt that it would not be satisfactory that the subject should be dealt with exclusively by solicitors."

The Bill of Lord Brougham for the amendment of the Real Property Conveyance Act (the print of which we have not yet seen), is intended to comprise clauses for the regulation of the costs of preparing deeds and other instruments, and directing the Taxing Masters to consider the learning and skill of the draftsman rather than the length of the document. His Lordship made the important communication, "that the Taxing Masters, who originally had an objection to the measure, had entirely changed their opinions, and now looked upon it with great favour." In the course of the discussion Lord Campbell observed, that the difficulty of the subject was very great, for "it would be impossible to lay down

any certain criterion as to the skill and learning of the parties engaged in drawing deeds with a view to fixing a scale of remuneration; but he thought if there were a high officer, vested with sound discretion, to determine questions of this nature, it would be an unspeakable advantage." Lord Brougham admitted the difficulty of the subject, but said, the matter must be left in the discretion of the taxing officer.

The *Lord Chancellor* assented to the introduction of the Bill, but "doubted whether it would effect the object intended. The great difficulty would be to determine the relative amount of the skill and ability displayed in each particular instance, and it would be a very delicate matter to express any judgment upon such a question."

In *The Jurist* of the 15th inst., there is a leading article on the subject, in which Lord Campbell's suggestion of "a high officer" to determine questions of this nature, is followed up by recommending that either a new Taxing Master should be appointed, being a *conveyancing counsel* of great experience, or that such conveyancing Counsel should be appointed on the first vacancy. It is contended by the learned writer that if the office be always filled by Solicitors there would be great difficulty in determining the relative amount of the skill and ability in each particular instance. "No doubt" (he says) "it would be difficult, if a gentleman whose peculiar field of operations had been the conduct of causes and the transaction of conveyancing business as a solicitor, were called upon to estimate the amount of difficulty in business which as solicitor he never transacted, but always laid before conveyancing counsel, because it was their special business, and was not his."

If it be intended that the *Barrister-Taxing Master* should determine the amount of the fees to be paid to counsel in conveyancing matters, there would be some ground for this suggestion; but the same reasons which induced Lord Lyndhurst and Lord Langdale, in the Act of 1842, to confine the office to solicitors would equally apply to all those parts of a bill of costs which comprise the charges for business done by the solicitor. If the *Solicitor-Taxing Master* cannot satisfactorily determine the amount to be allowed for the "special business of conveyancing counsel," how can the barrister properly estimate "the business which is not his?" and never having transacted, or seen it transacted, how can he apportion the proper fees for the labour, care, skill, and responsibility which it requires at the hands of a solicitor?

We believe, there are not a few solicitors who, in reference to their own personal interests, would prefer a taxation of their costs before the "high officer" proposed, because he might not improbably, on the one hand, take a more liberal view of the solicitor's claim; but, on the other hand, in cases where an attempt is made to increase the costs unnecessarily, a barrister, unacquainted with the details of practice, might not so effectually detect the overcharge.

The writer in the *Jurist* also points out that along with the appointment of a "First-Class Conveyancer" to the office of Taxing Master, the necessity would practically follow of "*counsel marking their own fees*;" and it is justly observed that if counsel are not paid by the length of the papers laid before them, but according to the difficulty of the case, "the solicitor must ask the counsel what the fee is to be, which—stripping the case of the mysterious and delicate intervention of the suggestion of counsels' clerks,—amounts to conveyancing counsel marking their own fees."

To this we can offer no objection, and if the Bar should deem it improper to refund part of a fee which the Taxing Master held to be too great, unless such officer were a barrister,—that ground should be taken into consideration in determining the qualification of a Taxing Master, to whom the assessment of the fees of counsel should be delegated. It is not impossible, however, that Lord Campbell, in suggesting the appointment of a *high officer* in the department of taxing costs, had in view the appointment of a Chief of the Taxing Board, who should act *judicially* on appeals from the other taxing officers; and certainly if a barrister is to be appointed, there can be no doubt the more eminent he is in learning, experience, station, and character, the better.

The success of the proposed alterations in the scale of professional charges will considerably depend on the Taxing Masters. In Equity, it will be recollected that although, according to the Statute, all future taxing officers are to be solicitors of 12 years' practice, one-half of the present Board is composed of the late Sworn Clerks, who are naturally in favour of the old rules of taxation, which left them no discretion. We dare say some of our readers will be of opinion that an eminent barrister, acting under a new system, would be more inclined than the old clerks in Court to deal liberally towards professional men, engaged in important and difficult causes, and that,

unfettered by narrow and technical rules; he would be disposed to consider the true value of the services rendered to the suitors.

We understand that the Council of the Incorporated Law Society presented a memorial to the Lord Chancellor in the early part of last year, setting forth very fully the grounds on which the practitioners sought for an alteration in the rules of taxation. They have been favoured with several interviews with his lordship, who intends, we believe, to refer the matter to the Taxing Masters and the Judges' Chief Clerks. If we may venture to make a suggestion on the course of proceeding, it would be that the steps recently taken by the Common Law Judges, on the alterations made under the Common Law Procedure Act, should be followed in the Courts of Equity. Three of the Common Law Judges, with three of the Masters, were attended by a deputation from the Incorporated Law Society, and a scale of fees, with large discretionary power to the Masters, was settled in Committee, and afterwards approved by all the Judges. A similar course on the present occasion would probably lead to the same satisfactory result and effect the object of the Legislature,—doing justice to the practitioner, and protecting the suitor from unnecessary or improper charges.

AMENDMENT OF THE LAW OF ARBITRATION.

REFERENCES TO THE COUNTY COURTS.

We gave last week a concise analysis of Lord Brougham's new Bill for Amending the Law of Arbitration. It will be recollected that in the Second Common Law Procedure Bill, now before the House of Lords, it is proposed to empower the Court or Judge to direct an arbitration *before* or *at* the trial (see p. 451, *ante*), with power to the arbitrator to state a special case for the opinion of the Court, and enabling the Court to send back the matters referred to the arbitrator for reconsideration.

In Lord Brougham's Bill, it is proposed to authorise the parties to refer their differences to a County Court Judge, to be heard in the same manner as a plaint, and on payment of fees, to be fixed under the Lord Chancellor's sanction by five of the Judges.

The following are the clauses for carrying this object into effect :—

Any parties may, by memorandum of reference in writing under their hands or the hands

of their authorised agents, refer any matter or matters in difference between them, set forth in such memorandum, to the arbitration of the Judge of any County Court appointed under the 9 & 10 Vict. c. 95, who shall be designated in such memorandum; and such memorandum shall be filed with the clerk of such Court; and such Judge shall hear and determine every such matter in difference, and make his award thereon, pursuant to the terms of the said memorandum; s. 1.

The clerk of the said Court shall from time to time, when necessary, give notice to the parties of the times and places appointed by the said arbitrating Judge for hearing the matters referred, and the parties and witnesses, when required, shall attend such hearing, and shall be summoned, and (if required by any party or by the said arbitrating Judge) shall be examined on oath or affirmation, as in the case of an action or plaint in a County Court; and such oath or affirmation may be administered by the said arbitrating Judge, or by the proper officer of the said County Court: and if any party or witness shall not attend such hearing, or shall not answer, or shall fail to produce any document at the same, or shall answer falsely on such oath or affirmation, he shall be subject to the same liabilities and consequences as if he had been guilty of the like act or omission when a party or witness on the trial of any such action or plaint; s. 2.

It shall be lawful for the Lord Chancellor to appoint five County Court Judges to frame a scale of fees of Court to be paid by the parties in arbitration cases before a County Court Judge under this Act; and such scale of fees shall be certified, and subject to approval, disallowance, alteration, and amendment, as the scale of costs and charges framed or to be framed by five County Court Judges under the provisions of the 15 & 16 Vict. c. 54, s. 1, and shall be recoverable as fees due under the 9 & 10 Vict. c. 95; and all such fees shall be paid over by the officer receiving the same to the treasurer of such County Court, to be applied by such treasurer in the manner provided by the last mentioned Statute; s. 3.

The award made by the arbitrating Judge as aforesaid shall be filed with the clerk of the said Court, and shall be binding on all parties, and shall have the effect of a judgment on a plaint in such County Court; and all costs of the reference and award, or which shall be due by virtue of the memorandum of reference and award, shall be taxed by the clerk of such County Court; and execution may issue for any money awarded and for any such costs as aforesaid; and if the award direct any party to do any act or thing other than the payment of money, and such party refuse to do the same, he may be summoned before the arbitrating Judge or before the Judge of any County Court within whose jurisdiction any party to such memorandum shall reside or shall have resided at the time of making such memorandum of reference, to show cause why he should not be committed for such refusal; and if on

folio of the *Draft Bills of Costs Book*. He should be instructed, also, to leave one, two, or more blank pages for each client's bill and its subdivisions, according to the supposed space required; and, as such space becomes filled up, the bill can be continued in another space in a subsequent part of the book, taking care to index the new pages, and, at the same time, to insert the folio thereof also at the bottom of the last completed page; and thus form one continued draft, although in different parts of the book. It would be well to have this book ruled with feint lines, narrower than usual, so that the clerk may draft it on alternate lines, and so leave room to settle the draft when the business is completed. It is too much the custom to make up the draft bills monthly, so much so, that many works on solicitors' book-keeping gravely advise this course. If it were to be a settled duty of a clerk to do this work daily, say the first thing in the morning, as its importance deserves, it would be found it could and would be done with ease *some time* during the day; whereas when it is deferred to the end of the month, or to that 'good time coming' when there is nothing else to do, it needs scarcely an appeal to the experience of all having a knowledge of the subject what a tendency there is to its becoming irrevocably in arrear, to the great inconvenience and loss of the practitioner; indeed it is universally admitted, that the delay in making out the costs is the greatest, most prevalent, and most intractable evil hitherto prevailing in solicitors' book-keeping. One hour, and frequently much less, well applied each day by the principal in making up the Day Book, and by a clerk of ordinary capacity in drafting it out, would go far to obviate this self-reproach of the Profession, besides inducing a habit of regularity, system, and order in other matters; on the one hand, adding considerably to the profits of the business, and on the other, having a tendency to effect a saving in clerks' salaries generally, by permitting no arrears of work of any kind to accumulate; extra clerks being frequently engaged to reduce these arrears, which it becomes their interest to perpetuate.

"It may be urged, that, in the country, the agent's charges interfere with this daily drafting out of the costs, but there are two simple methods of obviating this difficulty with advantage; one plan is to leave spaces in which to interline or interleave them, but the other method, which is far better and is fast obtaining ground in the best conducted offices in the country, is to copy the agent's charges at the end of the bill in *ordinary matters*. There are several advantages attending this latter course, viz., the narrative runs as well, or better, if the country business is uninterrupted in its detail by the intermingling of the town business, which of itself will read as well, or better, if kept separate. A still greater advantage arises from the clients being able the more clearly to see the outlay to agents (*sic*, as far as the client is concerned), in contradistinction to the country charges; and last, and not least,

much trouble and complexity is avoided; and it may also be added, that there is no valid objection to the adoption of this course. With respect to the taxation of a bill, with which this plan may be supposed to interfere, it will be borne in mind, that in whatever way a bill may be drawn in the country, it is frequently, if not universally, re-drawn by agents previously to taxation. Besides, it may still further be urged, that only a comparatively small number of bills are taxed, it being a proper boast of many of the Profession that, excepting an occasional Common Law bill to be paid by the defendant, few bills are ever taxed. Some adopt the plan of drafting the costs on loose sheets, but this is objectionable, from their liability to be mislaid, while there is no corresponding advantage.

"The *Draft Costs Book*, then, after being duly made should, if possible, be placed within range of the eye and hand of the *principal*, so that when time or inclination serves, he might devote a spare half-hour or hour in looking through the book, to settle any bill where the business may be completed, and then direct it to be copied and delivered, and put in course of settlement: by this means many small and even large amounts, which otherwise might have a great tendency to escape notice, might be realised, to the mutual advantage of attorney and client. It being a matter of notoriety, that when bills are not sent in in due course, whether intentionally or from neglect, some clients, especially the occasional ones, are apt to attribute the delay to any but the right cause; and, may be, fearing they may have to pay a greater amount, to compensate for the delay, neglect calling altogether, or take other matters to some other office."

Prize Essay on the Laws for the Protection of Women. By JAMES EDWARD DAVIS, of the Middle Temple, Barrister-at-Law. London: Longmans. 1854. Pp. 247.

THIS work is the result of a resolution of the Associate Institution, for improving and enforcing the Laws for the Protection of Women, offering a premium of 100 guineas for an Essay on the above subject. The arbitrators were the Bishop of London, Vice-Chancellor Wood, and Mr. Roundell Palmer.

The contents are as follow:—1. Ancient laws and institutions of other countries; 2. Historical account of legislation in this country; 3. Present state of the law in this country; 4. Foreign codes; 5. Defects of our law, and suggested remedies.

The following is an historical summary of the views presented to the reader in the course of the volume:—

"With respect to the legislation of remote times and countries, our knowledge, as has been observed, is necessarily of itself so scanty,

both of the laws themselves as of the state of existing facts they were intended or calculated to meet, that we can predicate little respecting them with any satisfactory degree of certainty. We have, however, undoubted evidence of efforts made to restrain and suppress those particular vices and evils which now call for legislative interference in this country. In the states of Greece and the empire of Rome, we see that legislation was directed against public and private prostitution, but apparently of an imperfect kind, the necessary result of its foundation on mere principles of political economy, and the absence of the higher motives of Christianity. In Athens and in Sparta, the raising of men for the purposes of the State was the foundation of the legislation of Solon and Lycurgus with reference to the intercourse of man and woman. The principle was adhered to in Rome. A marked change occurs, however, in passing from Greece to Italy; for we see in the legislation under the Cæsars (with traces of it at even an earlier period) vigorous endeavours made to preserve female chastity for its own sake, by punishing attempts of every kind directed against it, whether by force or by fraud, of a private or public kind. Through it all, that extraordinary parental power is visible, unparalleled in the history of any other country, which, treating the daughter as the property of her father, made not only any attempt on her virtue an invasion of his right, but, where she yielded, operated also as a forfeiture of her life. The corruption of morals proceeded notwithstanding, and could not be stayed even by the efforts of Justinian.

"Among the Greek nations, on the other hand, we find families—households, not cities, allied by domestic ties, and apparently esteeming chastity for the happiness it caused, enforcing it by peculiar laws, and by the penalty of the 'wehrgeld.' From the peculiar character of these nations, and the absence of large towns, we are without traces of laws against public prostitution or the traffic in seduction. Their customs and their manners having been transferred with the Saxons to England, and taken firm hold, were now strengthened by the effects of Christianity, and the laws of the kings and the 'witan' in favour of morality and chastity were enforced and illustrated by a belief in the Divine injunctions of Holy Writ.

"After the Norman conquest, and the establishment of Ecclesiastical Courts, the cognizance of all offences against chastity, as well those that were previously public offences, as matters over which the Church had ever held jurisdiction, was transferred from the King's to the Bishops' Courts, with the exception of those charges involving personal violence. The Judges and expounders of law in the King's Court, appear to have gradually lost sight of the distinction between the mere *transfer* of authority and the *existence* of the laws and offences. Either from the fear of trespassing on ecclesiastical authority, or from a laxity of high principle, and a low estimate of woman's position, or from mere negligence, or perhaps

from all these causes and motives combined, the power of the King's Court was gradually restrained by the Judges themselves, until the notion that a parent had any legal interest in the chastity of his child, or that the public was interested in preventing persons, from motives of lucre, procuring women to prostitute themselves, was exploded. There was legislation, it is true; but it was against personal violence or for the protection of property, the loss of which sometimes involved the abduction of a daughter. To protect the property, therefore, it was necessary to check the abduction of the woman as one of the incidents in the offence. Provisions made for the repression of violence are not calculated to meet the progress of vice, which changes its character and aspect. The forcible ravisher of one age is represented in a subsequent period by the fraudulent seducer; and as the highwayman has given place to the sharper and pickpocket, so the aider and abettor of a rape is changed into a procurer and panderer to vice.

"In the meantime, from the corrupt practices of the Church before the Reformation, and from various causes since, the power of the Ecclesiastical Courts has become of no practical utility in correcting morals, and enforcing the jurisdiction assigned to them. We thus see that this transfer of authority, although at the time perhaps calculated to effect the object in view, is one cause why we are at this time so deficient in our laws and powers for the protection of women. The laws have, in fact, receded, while vice has advanced.

"The time has arrived when something must be done in good faith and in earnest. Even the exponents of the Common Law, when not actually tied down and confined by express decisions, have felt the spirit of extension and the growing wants of the age; but still the powers of that law are either undefined, or, where defined, they generally illustrate the necessity for the interference of the legislature."

TRANSCRIPTS OF CHANCERY ACCOUNTS.

HARDSHIP ON LAW WRITERS.

It is scarcely necessary to observe, that nothing can be more important in the transcript of legal proceedings and documents, than entire accuracy in items of account. Much more time is consumed from the necessity of verifying each figure than in transcribing and examining other papers where the context supplies a test of correctness. At present, however, no allowance is made to the solicitor for the time occupied and responsibility incurred in the examination of such accounts, although the labour of two persons, and great care and attention are particularly called for.

By the operation of the Order made by

Lord St. Leonards, on the 10th November, 1852, for regulating the charges for copying proceedings in Chancery, the law writers have also been subjected to great injustice, the present scale of charges being totally unremunerative to those employed in copying.

The great delay and inconvenience which the Profession generally have experienced in getting their business done by law stationers, is attributable wholly to their inability to command at all times sufficiently experienced copyists to perform those duties which have hitherto been satisfactorily discharged by them, in consequence of the inadequate remuneration for their services, although the law stationers have made some advance on the prices, but which is still insufficient.

In order to submit the case to the consideration of the trade, and the adoption of other means for the amendment of the Order of Lord St. Leonards, a meeting was held on the 13th instant, at the London Mechanics Institution, where Mr. *John Robert Taylor* was requested to preside, and the following resolutions were passed :

"1. That the effect of the Order of the 10th November, 1852, made by Lord St. Leonards, as to the counting of folios in Chancery, has been to reduce the writers' remuneration for copying receivership accounts, schedules to answers, bills of costs, and similar Chancery proceedings, by more than one-half; and, as experienced copyists are necessarily required for such description of business, the prices consequently obtained are, in the opinion of this meeting totally inadequate to the time, labour, and care which must be bestowed upon that class of documents.

"2. That, in the opinion of this meeting, Lord St. Leonards, in making the Order referred to, could not have foreseen the possible denial to a numerous body of workmen of a fair return for labour—which in fact has been its result; and therefore it is earnestly hoped that the Lord Chancellor may be pleased so to alter or modify the Order made by his predecessor as to remedy the grievance of which this meeting respectfully complains.

"3. That much trouble and inconvenience is, and always has been, experienced in consequence of Chancery and Common Law proceedings being differently counted. And inasmuch as Chancery proceedings were directed to be counted at 90 words to the folio owing to the voluminous nature of those proceedings (which proceedings are now greatly simplified and shortened); and also, inasmuch as 72 words to the folio is the rate recognised by the Stamp Acts, this meeting deems it expedient that a uniform system of counting should be adopted, taking the Common Law folio of 72 words as the standard.

"4. That a memorial to the Right Honourable the Lord High Chancellor of Great Britain be engrossed on vellum, embodying the foregoing resolutions, and praying for a revision or modification of the matters referred to, and that the same be signed by the chairman on behalf of the present meeting and forwarded to his lordship."

We are glad to make the following extracts from an able leading article in *The Morning Advertiser* of the 13th inst.

"It is often said that one-half the world knows not how the other half lives; and we may add that if it could see how slender are its means of existence, it would wonder that it could live at all. Of late years we know more of the domestic economy of our poorer fellow-countrymen; but, laudable as has been the intention and the zeal with which we have inquired into this interesting topic, our examination has concerned rather the poorest than the poor. * * * There is a class above pauperism but below competence, which is, we doubt not, equally entitled to our sympathy, but with regard to whom we labour under this difficulty, namely, that they are poor enough to need help, though not poor enough to receive it in the shape of alms. Some among them, perhaps many, have embraced their present occupations as a refuge in the hour of destitution; men of education, of good character, but the sport of the caprice of fortune. Take, for instance, the body of *law writers*, whose hardships just now force themselves on our attention. At this moment it is alleged as a fact that these men are working at prices ridiculously inadequate to their necessities, but with incessant labour they cannot earn a livelihood, and that their condition is in truth very little removed from that of the needlewoman. * * * From common things we turn to little things. On the 10th November, 1852, Lord St. Leonards, then Lord High Chancellor of Great Britain, in pursuance of powers conferred upon him by 'An Act for the relief of the Suitors of the High Court of Chancery,' ordered and directed as follows, videlicet—"All office copies and other copies of proceedings and documents shall be counted after the rate of 90 words to the folio, and when the same, or any portion thereof, shall be written with columns containing figures, in every such case each figure or combination of figures representing a distinct denomination shall be counted as one word, therefore 4,151l. 16s. 9d. would count as three words."

"We are quite sure that it was never the wish of the public, when they were agitating for a reform of Chancery proceeding, that any body of men should be directly injured by it. Of course, it was understood that lawyers and counsel would, to some extent, suffer, and no one could be expected to feel any pity for them, any regret that their incomes should be reduced say, from a thousand

a year to 750*l*. The public was the gainer, or, in other words, it recovered what had been unjustly, because unnecessarily taken from it. But while the law writers have suffered by the printing of bills and answers, as much in proportion as the lawyers have suffered by the diminution of fees, they are subjected to a still further loss by Lord St. Leonards' Order, a loss which is tantamount to ruin. It seems, on the face of it, only just that every figure should count as a word, for the facility of writing figures, which is in one respect an advantage, is a disadvantage in another, because mistakes are more likely to occur, and then greater care is requisite. Now, it must be observed, that since printing has been employed for the multiplication of bills which were formerly engrossed, the chief business of the law writer consists in copying receivership accounts, schedules to answers, and costs. Before he commences the task of copying he must arrange his columns and rule his paper; and as there are scarcely two receivership accounts alike, he can derive no manner of assistance from the ruling machine. He must, therefore, perform the operation with his own hand. He then copies the figures; a far more tedious process than that of writing a folio of straightforward words; and requiring far more attention and caution, in addition to which much time is necessarily consumed in dotting up, circumflexing, and ruling, while the Order of 1852 also requires the folios to be counted and marked in red ink, a process well understood to require much revision and attention.

"It has been suggested by the Incorporated Law Society, that the folios should be uniformly 72 words instead of 90; that the anomaly of a deed being counted, for stamping purposes, at 72 words, and in a cause at 90 should, cease; and that each figure should count as a word. And if it is true, as alleged, that since the alteration a writer may labour all night without earning more than 1*s*. 4*d*., we must say that this is reform in a very wrong direction, that it is a gross injustice, and ought to be remedied at once. Few kinds of labour are more toilsome than that of the pen when wielded in the execution of such a task. In its sedentary character it resembles the toil of the needle, and indeed in other respects has a marked affinity to that instrument of slavery. But the needle could be plied at all times; the pen in the law writer's hand has not that advantage. When the long vacation comes there is little doing, and he who is not fortunate enough to get his share of that little, must live as he can—and our readers understand what that means. He must want or borrow—evils of nearly equal magnitude in such a case as his. Should such a state of things continue?—No. The labourer is worthy of his hire; and it is dishonest to withhold it."

NOTES ON RECENT STATUTES.

EQUITY JURISDICTION IMPROVEMENT ACT.

PRACTICE UNDER S. 39 FOR DEFENDANT'S EXAMINATION VIVA VOCE AT HEARING.

THE plaintiff in a cause, in which publication had passed and which had been set down for hearing, moved for leave to issue a subpoena ad test. calling on the defendant to appear personally at the hearing in order to be examined *viva voce* touching the matters in question between the parties.

The Vice-Chancellor *Stuart* said,—"This is a perfectly novel application, but is said—1*st*, to be rendered necessary by reason of the recent changes in the practice of this Court; and 2*ndly*, to be warranted by special circumstances. * * * The application for leave to issue a subpoena is made under the 39*th* section; but the word subpoena does not once occur in the 39*th* section, neither do the provisions of the Statute seem at all to point to anything in the nature of a subpoena; but, on the contrary, contemplate some order to be made by the Court on the hearing of the cause for the examination of a witness or a party. It is plain, therefore, that, if an order for leave to issue a subpoena is a thing otherwise unprecedented in practice, the Court has no authority given to it to make such an order under the 39*th* section.

"It is said, that by the 39*th* section, the Court has a discretionary power at the hearing of the cause to examine, if it see fit, a defendant or a witness; and that, as essential to the exercise of that power, there must be also the right to authorise the service of a subpoena, so as to avoid the expense and delay that would occur, should the Court, in order to have the benefit of such examination, be compelled to adjourn the hearing of the cause; and that it would be much more just and convenient, even to the defendant or witness himself, that some notice should be given him that his testimony will or may be required.

"It is contended, on the other hand, that, on the true construction of the 39*th* section, the Court at the hearing can, and if it should think necessary will, order the defendant or witness to attend and be examined; and that such order will be much more stringent than an ordinary subpoena. In my judgment, this is the true construction of the 39*th* section.

"Upon the question of convenience, it cer-

tainly does appear to be desirable that the defendant receive some intimation that his testimony may be required; and that the plaintiff may feel assured that no delay will be occasioned in the hearing of the cause by the absence of a witness, whose testimony may be deemed necessary by the Court; and, in the course of the argument, I ventured to suggest whether this object might not be perfectly well attained by the service of a notice. But though such is my opinion on the question of convenience, I must not, upon that ground, strain the construction of an Act of Parliament beyond the legitimate meaning of its language.

* * * * The motion, therefore, being perfectly novel, and unauthorised by the Act of Parliament, I must refuse it, and, although, when a fair question arises on the construction of a recent Act of Parliament, the Court is loath to visit the party who raises that question with the costs of the failure, yet, as this motion is so wholly without authority, either by the Act or by the ordinary practice of the Court, I must refuse it with costs." *May v. Biggenden*, 1 Smale & G. 133.

LAW OF ATTORNEYS AND SOLICITORS.

ALTERATION OF NAME ON ROLL.

It appeared that a solicitor had, for family reasons, changed his name and assumed that in addition of "Chamberlain." On a motion, supported by affidavit, that the change had not been made from any improper motive, the *Master of the Rolls* ordered, that the name of Chamberlain should be entered on the Roll opposite J. Matthews, so that the name should stand as J. Matthews Chamberlain, and that an endorsement be made accordingly on his admission. *In re Matthews*, 16 Beav. 245.

For the previous cases on this subject, see *Ex parte Ware*, 6 Dowl. P. C. 311; *Ex parte Daggett*, 1 L. M. & P. 1; 9 C. B. 218; *Ex parte Benthall*, 6 M. & G. 722; 1 D. & L. 747; 7 Scott, N. R. 407; *Ex parte Dearden*, 5 Exch. R. 740; 1 L. M. & P. 666; 9 C. B. 221, n.; *Ex parte James*, 1 L. M. & P. 6; 5 Exch. R. 310; 9 C. B. 220; *Ex parte Bryan Jones*, ante, vol. 46, p. 160.

LAW OF COSTS.

OF PETITION BY TENANT FOR LIFE FOR PAYMENT OF INCOME ON FUND IN COURT.

The *Master of the Rolls*, upon the authority of *In re Ross*, 15 Jur. 241, held, that the costs of a petition by a tenant for life of a fund paid into Court under the 10 & 11 Vict. c. 96, for payment to her of the income thereof, were payable out of the corpus, and not, as contended by the remainder-man, out of her share in the fund. *In re Field's Trust*, 16 Beav. 146.

OF ASSIGNEES OF BANKRUPT MORTGAGOR, DISCLAIMING BY ANSWER IN SUIT TO REDEEM.

In a suit by a subsequent mortgagee to redeem a first mortgage, it appeared that the assignees of the mortgagor, who had become bankrupt and had no assets, by their answer stated they had no assets to pay their costs, and disclaimed all interest, and said they would have disclaimed before suit, if the plaintiff had made any application to them. It also appeared one of the assignees had been examined on behalf of the plaintiff, as a witness in the suit.

On an application for their costs, the *Master of the Rolls* said, "the settled rule is, that if the assignees of a mortgagor do not disclaim prior to filing a bill, but only by their answer, no costs are given. Is the rule altered by the plaintiff's examining him as a witness? In the case cited [*Rowland v. Witherden*, 3 M.N. & G. 568], it was held, that no decree could be made against a defendant who had been examined; but the Lord Chancellor did not decree that he was to have his costs. The bill must be dismissed as against the assignees, without costs. *Ford v. White*, 16 Beav. 120.

LAW OF EVIDENCE.

EXAMINATION OF WITNESS BY COMMISSION BEFORE ISSUE JOINED.

In an action to recover the amount claimed on a statement of accounts and which the defendant had admitted in the presence of G. to be correct and promised to pay, it appeared that G. was about to proceed to Port Natal, and to reside there for 18 months. The plaintiff thereupon applied for a commission, although before declaration, intending to try at the ensuing assizes, and an order, pursuant to the 1 Wm. 4, c. 22, s. 4, for its issue was made, under which G. was examined. On a

rule nisi to rescind this order, Lord Campbell, C. J., after referring to the above section, said,—“No limitation is there given, except that an action shall be depending: nor is there any rule of Court that a commission shall not be granted before issue joined. Mr. Willes relies upon past practice; and it is, undoubtedly, a safe rule that, unless extraordinary circumstances occur, practice should be adhered to. But the exigency of a particular case may require us to make an exception where justice would be defeated unless a commission were at once issued. And the practice in Chancery, of allowing interrogatories before answer, affords an analogy. The object of the late Act was to obviate the necessity of going to the Court of Chancery for a commission, and for that purpose to give the same benefit as might, independently of the Act, be had there.” And Paterson, J., added,—“Our decision is not to be taken as an authority for saying that as a matter of course a commission to examine witnesses may be granted before issue joined. The general rule remains unaltered: a case like this is an exception.” The rule was therefore discharged. *Finney v. Beesley*, 17 Q. B. 86.

PRACTICE ON CLAIMS.

DECREE FOR IMMEDIATE SALE UNDER 15 & 16 VICT. C. 86, S. 48.—PAYMENT.—FORECLOSURE.

THIS was a claim by a mortgagee against the parties entitled to the equity of redemption in certain copyhold premises, and prayed payment of the mortgage-moneys with interest and costs, and in default thereof for a sale, or if the Court should not think fit in the first instance to direct a sale, then for a foreclosure. The defendants had been served and had entered an appearance, but did not appear at the hearing. On a motion for a decree for an immediate sale under the 15 & 16 Vict. c. 86, s. 48, the Vice-Chancellor *Stuart* said,—“Upon looking at the language of the 48th section, the effect of the enactment is to supply something, the absence of which was often the occasion of extreme injustice, delay, and expense, without answering any useful purpose; I mean a power in the Court to direct a sale in lieu of foreclosure. In this case, however, I am asked to make an immediate decree for a sale, in the absence of the two parties who are the owners of the equity of redemption. * * * In the view of a Court of Equity, the owner of the

equity of redemption has been always considered as entitled to an account, and an opportunity to redeem his estate, before he is bound absolutely. * * * I shall therefore direct the chief clerk to take an account of the debt, interest and costs; appoint a month, within which payment is to be made; and in default of payment order a sale under the direction of the Court.” *Smith v. Robinson*, 1 Smale & G. 140.

INQUIRY AT HEARING AS TO PARTIES INTERESTED UNDER MORTGAGOR'S WILL ON APPLICATION OF EQUITABLE MORTGAGEE.

A claim by the equitable mortgagee of real estates prayed an account of the rents and profits received by a deceased trustee, and by his heir who disclaimed, and for the appointment of new trustees; and at the hearing he asked for an inquiry to ascertain the parties interested under the mortgagor's will. The Vice-Chancellor *Stuart* said,—“None of the *cestuis que trust* are parties to this claim. I am asked at the bar to direct expensive inquiries at the instance of a party who has only a redeemable interest, and may therefore be paid off, in which case there would be no one by whom the costs of those inquiries could be borne. The claim may perhaps be amended by making some of the *cestuis que trust* parties. I cannot at present make the order which is asked.” *Wetherill v. Garbutt*, 1 Smale & G. 124.

QUERIES ON ATTORNEYS' CERTIFICATES.

RENEWAL OF CERTIFICATE.

I OBTAINED an order for the renewal of my certificate in August last, being then in treaty for a partnership, but which was afterwards abandoned. I have never acted on the order. Can I make it available for this year?—never having practised since the date of the order.

T.

[The order granted in August last was available only for the current year which expired on the 15th November. The usual notices must be renewed, and an affidavit made in support of the application for a new order—ED.]

POLICE COURT PRACTICE.

I was admitted and enrolled as an attorney in the Superior Courts last Michaelmas Term,

and am now the managing clerk of a solicitor. Amongst other business to which I have to attend in his behalf, is that of appearing in and advocating cases at the Police Court and Petty Sessions of Magistrates. Is it necessary that I should take out a certificate in order to entitle me to be heard on these occasions?

J.

[Under the 6 & 7 Vict. c. 73, s. 2, no person can act as an attorney in any matter before any justice or justices, unless duly qualified as such attorney. The person so acting without authority would be liable to be prosecuted for the misdemeanour. The magistrate may, however, hear the authorised clerk of an attorney who has been duly admitted and obtained his certificate. The danger of granting such permission is, that unfortunately some of the needy practitioners allow their names to be used by persons who commit acts of malpractice. On the other hand, where a respectable attorney may be unable to attend personally on a given occasion, it would be a hardship to refuse a hearing to his managing clerk.—Ed.]

SELECTIONS FROM CORRESPONDENCE.

NUISANCE.—GAS WORKS.

UNTIL within the last 10 years, the site of the present Phoenix Gas Works on the south side of Kennington Lane, Vauxhall, formed the reservoir of the then Vauxhall Waterworks Company. That company having formed a junction with the Southwark Waterworks, the site of the reservoir and some adjacent property was sold to the Phoenix Gas Company, where gas has been since constantly manufactured at no little inconvenience to the neighbourhood from the offensive and palpably injurious smell occasioned thereby.

This gasometer the Phoenix Company propose to remove, and to construct another of much larger dimensions, it is said the largest in England, on the site, and for which they are now digging out the foundation, whereby the

nuisance will be very considerably increased,—in consequence many of the inhabitants have given notice to quit their houses, which will remain untenanted, much to the loss of the landlords.

Is the company liable to an action or indictment, or both, for the nuisance, and will they be amenable to an action for damages at the suit of a landlord for any consequential deterioration to his property or loss of rent, and will a Court of Equity grant an injunction to restrain the company from erecting and carrying on such a work, so injurious to the health of the inhabitants in a very populous district?

CIVIS.

COUNTY COURT FEES.

I trust you will not fail to reiterate Lord Brougham's statement in the House of Lords, on the authority of a respectable city solicitor, that the costs of recovering a debt of 14*l.* 3*s.* 6*d.* in the Middlesex County Court amounted to 7*l.* 5*s.* 9*d.*, although an undefended case,—above 50 per cent!—and that in the Court of Queen's Bench the fees would only have been 30*s.*, and perhaps only 12*s.* 6*d.* In another case of trespass, 5*l.* was claimed, and a verdict consented to, but the Court fees were 8*l.* 0*s.* 6*d.* In a third case, 10*l.* 0*s.* 6*d.* was charged as Court fees on a claim of 18*l.*, and 6*l.* in addition expended in recovering the debt, making a cost of 16*l.* to recover 18*l.*,—10*l.* of which was extorted as Court fees. The whole County Court fees in the kingdom amounted to 275,000*l.*, while the fees of the Court above had been reduced to 50,000*l.*!! Comment is useless.

Individually, I prefer suing in the Queen's Bench for a debt under 20*l.* and lose the costs,—having only a very few shillings to disburse,—to suing in the cheap Court—by which I save the annoyance of six or seven hours' attendance and loss of time. This reminds me of a great evil in those "cheap and nasty" Courts,—why are some 250 to 350 cases fixed for adjudication in one day? it is utterly impossible that they can have due attention; and at three o'clock the cases are hurried on and disposed of in a way that I am ashamed of.

I was for a quarter of a century a Commissioner in the Southwark Court of Requests.

AN OLD PRACTITIONER.

ADMISSION OF ATTORNEYS.

Queen's Bench.

RENEWED NOTICES OF ADMISSION.

On the last Day of Easter Term, 1854, of Persons who gave Notice of Admission for Hilary Term, 1854, pursuant to Rule of Court of H. T., 1853.

Clerks' Names and Addresses.

Amery, Henry Dickenson, Stourbridge; Peckham; 14, Everett Street
Arundel, Robert, 9, Suffolk Place, Islington;
Pontefract

To whom Articled, Assigned, &c.

R. Price, Stourbridge.
J. B. Girdlestone, Pontefract; B. Marshall,
Leeds.

Clerks' Names and Addresses.

Battye, John, 25, Granville Sq.; Huddersfield
 Chambers, Rt. Phillips, 6, South Sq.; Gray's
 Inn; Swinton Street
 Coulcher, Cooper, 31, Swinton St.; Gray's
 Inn Road; Albert Terrace
 Craven, Abraham, 12, Compton Street, East,
 Brunswick Square; York
 Croome, Alexr. Swayne, The Rectory, Beth-
 nal Green
 Davies, Rees Thomas, 39, Dorset St., Port-
 man Sq.; Cecil St.; Neath and Swansea
 Dinn, Henry, 14, Stockwell Pl., Stockwell
 Edwards, Thos., 12, Clayton Pl., Kennington
 Head, John Henry Horsford, 17, Bridgewater
 Square
 Hillman, Edw., The Clift, near Lewes
 Logan, Alexr. Crosby, 29, Henrietta Street,
 Dalby Terr., City Road
 Morley, Ebenzer Cobb, Brentford; Kingston-
 upon-Hull
 Peren, Rt. Burchall, South Petherton; Alfred
 Place; Everett Street
 Rudge, Edm., jun., Norfolk Villas; Tewkes-
 bury; Chepstow Pl.; Lower Calthorpe St.
 Rush, Edward, 1, Craven Hill, Bayswater
 Simms, Frederick, Mornington Pl.; Feather-
 stone Bldgs.; Frederick Street
 Smith, John Wm., 44, Great Russell Street,
 Bloomsbury; Gravesend
 Thompson, John, 8, Judd Place, East; New
 Road; Whitehaven
 Wadson, James Weyman, Romford
 Wild, James Anstey, 9, Montpellier Villas,
 Stockwell
 Woodward, John Hawkes, Pershore, Fre-
 derick St.; Bedford Street

To whom Articled, Assigned, &c.

J. C. Fenton, Huddersfield.
 E. Mullins, Tokenhouse Yard; R. Paddison,
 Tokenhouse Yard.
 M. Coulcher, Downham Market; G. Platten,
 Lynn; F. R. Partridge, Lynn.
 E. Peters, York.
 J. Starmer, Wainfleet.
 J. J. Price, Swansea.
 W. H. Engleheart and R. Breeze, Great Knight
 Rider Street.
 J. Strutt, Buckingham Street.
 R. T. Head, Exeter.
 J. T. Auckland, The Cliffe, near Lewes.
 J. S. Robinson, Sunderland.
 C. H. Phillips, Kingston-upon-Hull.
 H. B. Peren and J. B. Hayward, South Pether-
 ton; W. H. Wright, and J. Kingsford,
 Essex Street.
 J. Thomas, Tewkesbury.
 J. R. Rush, Austin Friars.
 G. Hodgkinson, Worksworth.
 Hilder and Arnold, Gravesend.
 J. Musgrave, Whitehaven; P. Wright, Liver-
 pool.
 S. J. Wadson, Austen Friars.
 J. Mackrell, Cordwainers' Hall; W. M. Hacon,
 Fenchurch Street.
 W. W. Woodward, Pershore.

Added to List pursuant to Judges' Orders.

Brutton, Wm. Courtenay, 15, Great James
 St., Exeter; Southampton Row
 Everest, William Alexander, Epsom
 Lomax, Richard, Bolton St., Piccadilly; Bury
 Preston, Richard Montagu, Chester

H. Ford, Exeter; C. Brutton, Exeter.
 W. Everest, Epsom.
 A. Grundy, Bury.
 T. Tyrrell, Guildhall.

RENEWAL OF CERTIFICATES.**Halls Court.***In Easter Term, 1854.*

Barber, Wm., Hen., 25, Surrey St., Strand.

Queen's Bench.*On the 25th April, pursuant to Judge's Order.*

Eliot, James, 28, Morpeth St.; Wakefield;
 Penton Place; St. Paul's Place; Princes' Row.

Last day of Easter Term.

Rule, Geo., 16, Southampton St., Fitzroy Sq.

*Before the Judge at Chambers, on the 12th May,
 1854.*

Atkins, John, jun., 9, York Terr., Peckham;
 Epsom; and abroad.

Arden, Charles Frederick, Weymouth.
 Boys, Alfred William, 2, Ponsonby Terrace,
 Vauxhall; Trinity Square.
 Duerdin, John, Upper Woburn Pl., Euston
 Square.
 Dawson, R., 20, Park Pl., Manchester Terr.,
 Islington; Kentish Town.
 Dickenson, Edmund Allgood, 2, Montanna
 Place, South Lambeth; Nicholas Lane, and
 Bush Lane, City.
 Fletcher, Robert Thomas, King St., Chelsea;
 Bedford.
 Gunston, Will. W., East Moulsey; 4, On-
 slow Square, Brompton.
 Higginbottom, Robert Hall, Nottingham.
 Hollingsworth, John, Ware, Herts.
 Lee, Alan John, 27, Lincoln's Inn Fields.
 Marshall, J. T., 12, Southampton St. Strand;
 Beckenham, Kent.
 Morgan, J. Nathaniel, Llandoverly.

Newington, A. T., 8, George Street, Portman Sq.; Victoria Road.

Peacock, Lewis, 19, High St., Eccleston St. Remington, Reginald, Rochdale.

Wilkinson, John, 106, Mount St. Grosvenor Square.

Willins, George, 9, Tower Street; Fenchurch Street.

Williams, Joseph Baynton, Bristol. Wood, Cornelius, Upper Broughton, near Manchester.

Wright, Arthur, Leamington Priors.

ATTORNEYS TO BE ADMITTED.

Trinity Term, 1854.

Queen's Bench.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Addison, Thomas Russell, 40, Holford-square, Pentonville; and Soham	T. Hustwick, Soham
Addison, Wm. Rd. Oliver C., 40, Holford Square, Pentonville; and Soham	T. Hustwick, Soham
Alder, William, 53, Herbert-street, Hoxton; and Hurstburne Tarrant	H. Footner, Andover
Austin, James, 31, St. Martin's-st., Leicester-sq.	Wm. Hen. Austin, 51, St. Martin's-st., Leicester-sq.
Barker, Charles Henry, 32, Lincoln's-inn-fields	J. Bowker, Gray's inn-square
Beaumont, Robert, Pudsey; and Hastings	C. Clough, Bradford, Yorkshire
Benbow, Clifton, 9, Powis-place, Great Ormond-street; and Cowley, near Uxbridge	J. H. Benbow, Lincoln's-inn
Blinco, Valentine Budd, 26, Percy-circus, Pentonville; 6, Devonshire-st., Islington; Warwick	Thomas Morris, Warwick; E. K. Blyth, 7, Serjeant's-inn
Britten, Henry, jun., 27, Frederick-street, Gray's-inn-road; and Bristol	H. Britten, Bristol
Canham, Henry Crabb, Deptford; and Sudbury	G. W. Andrews, Sudbury; F. S. Gosling, Gray's-inn-square
Carr, Edward Statter, 32, Gloucester-pl., Hyde-park	John Newbold, 41, Bedford-row; A. S. Field, Leamington
Carter, Hanwell Holmes, Nottingham	C. H. Clarke, Nottingham
Chapman, Lawrence Foster, Old Friars, Richmond	B. Field, Lincoln's-inn; H. Toogood, Parliament-st.
Charsley, Geo. Allington, 20, Argyle-sq., King's-cross; Lincoln's-inn-fields; and Ameraham	F. Charsley, Ameraham
Christie, John, Leeds	R. E. Payne, Leeds
Clegg, Alfred, Manchester	William Broome Parker, Jan yr alt Llandudla, Denbighshire
Clough, James, Pontefract	W. Clough, Pontefract
Cockeram, William Philip, 38, Guildford-street; Calthorpe-street; and Salisbury	H. R. Hodding, Salisbury
Cooper, Robert, Heigham, Norwich	Arthur Dalrymple, Norwich
Davies, George Thomas, 15, Compton-st. East, Brunswick-square; and Ashby-de-la-Zouch	W. Dewes, Ashby-de-la-Zouch
Denbigh, Joseph Simpson, Bradford, Yorkshire	J. Clayton, Witherby; D. Rycroft, Bradford, Yorkshire
Dickinson, Jno. Abraham, 8, Duke-st., Portland-pl.	D. S. Bockett, Lincoln's-inn-fields
Dorman, Thomas, 5, Doddington-grove, West Kensington; and Old Jewry	J. Crosby, Old Jewry
Drawbridge, William, 28, Edward-street, Hampstead-road; and Honley	J. C. Laycock, Huddersfield
Ensor, Thomas Henry, Worcester	A. Cuthbertson, Neath; T. Barneby, Worcester
Everall, John, jun., 32, Gt. Coram-st., Brunswick-square; Nottingham; and Wilmot-street	J. Bowley, Nottingham
Floyd, Cookson Stephen, jun., Huddersfield	Cookson Stephenson Floyd, sen., Huddersfield
Ford, Egerton, 26, Suffolk-st., Pall Mall; 8, Henrietta-st., Covent-gard n	George S. Ford, Henrietta-street
Fowden, Matthew, Cheadle, Chester; 14, Myddleton-square	John Worthington, Cheadle
Gething, Henry, 11, Millman-st.; and Grantham	F. Malim, Grantham
Gregory, Charles, Hampstead	E. Lambert, John-street, Bedford-row
Griffith, William, Much Wenlock	A. Phillips, Shifnal
Harris, James Raymond, 50, Wharton-st., Pentonville; Baker-street, Plymouth	J. Kelly, Plymouth
Hayward, Charles, 37, Burton-crescent; 25, Lincoln's-inn-fields; and Brackley	A. Hayward, Brackley
Hele, Thomas Shirley, 2, Millman-st., Guildford-st.	J. C. Tozar, West Teignmouth
Herniman, John Rd. Mills, 2, Windsor-terrace, City-road; and Exeter	J. Stogdon, Exeter
Hill, Stephen, jun., 18, Percy-circus, Pentonville; and Salisbury	S. Hill, sen., Salisbury

Clerks' Names and Residences.

Holt, Charles, jun., 250, High Holborn; 35, King-street; 54, Holborn-hill; Coventry
 Jackaman, William Batley, 27, Liverpool-street, King's-cross; and Ipswich
 James, George Frederick, 7, Hereford-st., Brompton; and Edgbaston
 Kay, John Dunning, 11, Union-square, Islington; and Leeds
 Keighley, Samuel Jagger, Compton-st. East; Halifax; Thornhill-crescent, Grace-street
 Kirkbank, John, 18, Lower Calthorpe-street; and Granville-square
 Lacey, William Manning, 52, Upper Norton-st., Portland-place; and Tokenhouse-yard
 Lamb, John Workman, 3, Goulden-terrace, Islington; Soley-terrace; and Worting
 Lindus, Henry William, 5, South-sq., Gray's-inn
 Lloyd, William Henry, 48, Park-st., Grosvenor-square; Norfolk-street; and Russell-square
 Marshall, William, Ashton-under-Lyne
 Meriton, Edward Busick, Colney-hatch

To whom Articled, Assigned, &c.

Jonathan Holt, Coventry
 S. B. Jackaman, Ipswich
 G. P. Wragge, Birmingham; A. B. Cowdell, Raymond-buildings
 J. Dunning, Leeds
 E. M. Wavell, Halifax
 G. G. Mounsey, Carlisle; G. M. Gray, Staple-inn
 R. Cole, Upper Norton-street
 G. Lamb, Basingstoke
 R. Hare, South-square
 W. J. Whyte, Russell-square
 J. Brooks, Ashton-under-Lyne
 Lee and Pemberton, Lincoln's-inn-fields

[To be continued.]

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lord Chancellor.

Regina v. Eastern Archipelago Company. April 20, 1854.

LETTERS PATENT OF INCORPORATION.—CANCELLATION OF ENROLMENT AFTER FINAL JUDGMENT AT LAW.—PETITION TO STAY.

Held, that upon judgment of the Exchequer Chamber affirming the judgment of the Court of Queen's Bench for the Crown, in an action of *sci. fa.* to annul certain letters patent of incorporation to a company, the cancelling of the enrolment in the Court of Chancery is ministerial, and a petition was accordingly refused to stay the proceedings until such time as the pleasure of the Crown in respect of a memorial and petition presented to her Majesty should have been declared.

It appeared that an action of *sci. fa.* was brought at the suit of the Crown, on the information of Sir James Brooke, to annul certain letters patent of incorporation granted to the Eastern Archipelago Company, and that the Court of Queen's Bench had given judgment therein for the Crown (reported 1 Ellis & B. 310). There was a writ of error from this decision, but on November 22 last, the judgment of the Court of Queen's Bench was affirmed (reported 23 Law J., N. S., Q. B. 82). This petition was now presented, praying that all the proceedings thereunder might be stayed until such time as the pleasure of the Crown in respect to a memorial and petition presented to her Majesty in Nov. last, for the Attorney-General to enter a *nolle prosequi*, should be declared.

Rolt and Freeling in support; C. Roupell and J. V. Prior, contra, cited *Bynner v. Regiam*, 9 Q. B. 523, and that the cancellation of the

enrolment by the Lord Chancellor was purely ministerial.

The Lord Chancellor said, that according to the case cited, the final judgment in the Court below put an end to the case as to the validity of the charter, and that nothing remained to be done but the ministerial act of having it brought into this Court to be cancelled. The petition would therefore be refused.

Lords Justices.

Wing v. Harvey. April 20, 1854.

POLICY OF INSURANCE.—CONDITION FOR AVOIDANCE ON GOING ABROAD WITHOUT LICENCE.—WAIVER BY RECEIPT OF PREMIUMS.

The agents of an insurance office received the premiums on a policy, to which a condition was attached for its avoidance on the assured going beyond Europe without the directors' licence, notwithstanding he had gone to Canada without such licence, of which fact the agents were aware, and the premiums had been from time to time forwarded to the office in London: Held, that the receipt amounted to a waiver of the forfeiture.

THIS was a creditor's claim to recover from the Norwich Union Assurance Office the amount of two policies of insurance effected by him in 1829 on the life of a Mr. William Bennett to secure a debt. It appeared that the insurance was made through the defendants' agent at Bury St. Edmunds, with a condition indorsed that it would become void by the person insured going out of Europe without the defendants' licence, and that Mr. Bennett had in 1835, on becoming embarrassed, gone to Canada without obtaining such licence. The plaintiff, however, continued the payment of the premiums to the agent and his successor,

who it was admitted were aware that Mr. Bennett was abroad, where he died in 1849.

Glasse and Fuoks in support; *Malins* and *Rogers*, contra.

The *Lords Justices* said, that as the premiums on the policies had been received by the defendants' agents, upon the faith of the policies continuing to be subsisting and effectual, notwithstanding Bennett's departure to, and residence in Canada, and had been from time to time transmitted to the defendants and retained by them without objection, they were bound by such payments as if made to them personally, whether the agents informed them or not of the true state of circumstances; and there was therefore a waiver of the forfeiture.

Master of the Rolls.

Cust v. Goring. Feb. 14; April 19, 1854.

WILL.—CONSTRUCTION.—SCOTCH HERITABLE BOND.—SECURITIES FOR MONEY.—DOMICILE.

To secure a sum of 2,400l., an English bond and a Scotch heritable bond were given, both the borrower and lender being English, and domiciled in England: Held, that although, according to the Scotch law, the heritable bond was descendible as real estate to the heir, it passed under a devise in a will made by the lender in England under the words "securities for money" as personality.

A BOND, dated in March, 1841, was given by Viscount Alford to Mr. W. Goring Rideout, to secure the payment of a sum of 2,400l. with interest at 4½ per cent., and which, it appeared, was an English bond in the common form, and afterwards a Scotch heritable bond, with interest at 5 per cent., was given to secure the same amount, although a different day of payment was fixed. It appeared that both the borrower and lender were at the time resident and domiciled in England, and a question arose whether the bond passed under the words of "securities for money" contained in a will made in England by Mr. Rideout as personality, or whether it passed according to the law of Scotland to the testator's heiress-at-law.

R. Palmer and *Green* for the plaintiff; *Lloyd* and *W. Hislop Clarke* for the defendants.

Cur. ad. vult.

The *Master of the Rolls* said, that according to the case of *Duchess of Buccleugh v. Hoare*, 4 Madd. 467, the bonds passed to the legatee and not to the heir.

Fenn v. Savory. March 21, 22; April 19, 1854.

WILL.—CONSTRUCTION.—ESTATE TAIL IN FREEHOLDS AND FOR LIFE IN PERSONALTY.

A testator gave all his leasehold and freehold estates in trust for his three daughters—the rents and profits arising therefrom only, after paying all ground rents, repairs, and

expenses appertaining thereto, equal share and share alike, to be divided quarterly or oftener, if his executors should think fit. He then gave 60l. per annum, in long and new annuities, to his daughters, share and share alike, viz., 20l. per annum each. He then directed, that if either of them should die, leaving no lawful child or children, her share should go to the surviving daughters, equal share and share alike, for them and his heirs for ever. There was a bequest of the residue and the proceeds of the sale of the personality to the daughters and their heirs for ever: Held, on construction of the will, that the daughters took an estate tail in the freeholds and an estate for life in the personality, with remainder over to their children.

THE testator, by his will, gave on trust for his three daughters, all his leasehold and freehold estates,—the rents and profits arising therefrom only, after paying all ground rents, repairs, and expenses appertaining thereto, equal share and share alike, to be divided quarterly or oftener if his executors should think fit. He then gave 60l. per annum in the long and new annuities in the Bank of England to his daughters, share and share alike, namely, 20l. per annum each; and directed, that if either of them should die leaving no lawful child or children, her share should go to the surviving daughters, equal share and share alike, for them and his heirs for ever; and he then gave to his daughters the whole of his residuary estate and the proceeds arising from the sale of his personal property, for the whole and sole use and benefit of his daughters and their heirs for ever. It appeared that Sarah, one of the daughters, had married the plaintiff, and had died leaving issue, and a question now arose as to the construction of the will.

R. Palmer, Prendergast, Martindale, L. Hoffman, and H. Bonham Carter for the several parties.

The *Master of the Rolls* said, that the bequest was identical with that in *Forth v. Chapman*, 1 P. Wms. 663, and that the daughters took an estate tail in the freeholds, and an estate for life in the personality, with remainder over to their children.

Vice-Chancellor Kindersley.

Wodehouse v. Wodehouse. April 20, 1854.

WILL.—SETTLEMENT AFTER DATE OF ELECTION.

After the date of the testator's will, whereby he gave to his daughter one-third of his property, one-half to be settled to her separate use, and the other half to her absolutely, the daughter had married, and the testator had settled on her a sum of 7,000l. It appeared that by an unattested codicil the testator had directed the 7,000l. to be brought into hotchpot: Held, that the daughter was not entitled to the 7,000l.

settled, but that it must be taken as part of the property comprised in the will, to one-third of which she would be entitled as therein mentioned.

THE testator, by his will, gave to his daughter one-third of his property, and he directed that one-half should be settled to her separate use, and the other half should be hers absolutely. It appeared that, after the date of the will, the daughter married, and that the testator settled on her a sum of 7,000*l.*, and that by a codicil (which being however unattested was inoperative) he declared such sum should be brought into hotchpot. A question arose on the testator's death, whether the daughter was entitled to the 7,000*l.* settled as well as to the benefit of the will.

Teed, Bai'y, Greene, and Horrall for the several parties.

The *Vice-Chancellor* said, that the 7,000*l.* must be taken as part of the property comprised in the will, to one-third of which she would be entitled—one-half absolutely, and the other half settled to her separate use.

Vice-Chancellor's Case.

Foster v. Birmingham, Wolverhampton, and Dudley Railway Company, and Birmingham and Oxford Junction Railway Company.
April 19, 20, 1854.

RAILWAY COMPANY ALTERING LEVEL OF EXISTING ROAD CONTRARY TO AGREEMENT.—INJUNCTION.

On the purchase of land in February, 1847, by a railway company, they agreed to make a road upon the same level as at present, where the owner passed to and from his brick kilns. Although the company's works were of such a nature as that the plaintiff might have inferred they intended to alter the level of the road, they had not interfered with the plaintiff's land until February last, and it appeared from the communications the defendants had not considered the agreement waived, but were prepared to arrange to get rid of its requirements: Held, that under those circumstances there was no acquiescence, and that the plaintiff was entitled to an injunction, without being put under terms to try his right at law.

THIS was a motion for an injunction to restrain the defendants from constructing a road across their line of railway at a lower level than that of the road referred to in the agreement which they had entered into on the purchase of the land in February, 1847, from a Mr. Parkes, and whereby they agreed to make a road upon the same level as at present, where the owner passed to and from his brick kilns. It appeared that the defendants had commenced making the road at a lower level by six or seven feet than the original road, and the plaintiff, who was heir-at-law of the devisee under the will of Mr. Parkes, having let the land for building purposes, the proposed violation of the agreement would be very injurious.

Cairns and Fowler in support; *Rolt and Russell*, contra, on the ground that as the conveyance did not contain the condition in question, it could not be enforced, and that the plaintiff had acquiesced.

The *Vice-Chancellor* said, that the only object of the conveyance was to vest the land in the defendants, and could not have the effect contended for. The only question was as to acquiescence. It was contended that the embankment made by the defendants so long ago as four years was of such a nature as that the plaintiff must have inferred the defendants intended to alter the road. They had not however touched the plaintiff's land until February last, and if he had applied before then he would have been met by the objection that he was too soon. It also appeared from the communications with the defendants that the agreement was not considered as waived, and that the defendants were prepared to arrange with the plaintiff to get rid of the inconvenience to which they would be subjected by the agreement. The injunction would therefore go, as it was in fact a case of specific performance, and the plaintiff would not be put under terms to try his right in an action at law.

Court of Common Pleas.

Charnley v. Gundry. April 20, 1854:

ACTION OF BILL OF EXCHANGE.—SECONDARY EVIDENCE WHERE LOST ALTHOUGH NON-NEGOTIABLE.

On the trial of an action to recover the amount of a promissory note which was not a negotiable instrument, it appeared to have been lost, and secondary evidence thereof was thereupon admitted. The defendant put in issue only that he did not make the note: Held, that secondary evidence was properly admitted, and a rule nisi was refused to set aside the verdict for the plaintiff.

THIS was a motion for a rule nisi to set aside the verdict for the plaintiff and enter it for the defendant in this action, which was brought to recover the balance due on a promissory note for 2,000*l.* It appeared on the trial before *Cresswell, J.*, at the last Liverpool Assizes, that the note was not a negotiable instrument, and that it had been lost, whereupon secondary evidence of its contents was admitted.

Knowles, Q. C., in support on the ground that as the note was non-negotiable it must be produced.

The Court said, the issue raised was simply that the defendant did not make the note, and that issue must be established in the same way as any other allegation, and if the instrument was proved to be lost, secondary evidence of it could be given. The rule would therefore be refused.

ANALYTICAL DIGEST OF CASES,

SELECTED AND CLASSIFIED IN ALL THE COURTS.

House of Lords.

APPEALS.

ABANDONMENT OF SHIP.

See Freight, Ship.

ADMISSION AT BAR.

Consequent directions to revoke judgment below.—Remit, with directions to alter the interlocutors complained of, and to decide the cause upon admissions made at the Bar of the House.

In other words, the Court below required to revoke its decision, not because it was wrong, but on account of new evidence received in the Court of Review by consent of both parties. *Cullen v. Black*, 1 Macq. 374.

APPEALABLE INTERLOCUTOR.

Reference to accountant.—An interlocutor directing a reference to an accountant may be appealed against, under the 48 Geo. 3, c. 151, s. 15, although leave to appeal was not granted by the Court below, and although the interlocutor was pronounced without any difference of opinion.

Case assimilated to that of a reference as to title, upon a bill for specific performance in the Court of Chancery. *North British Bank v. Collins*, 1 Macq. 369.

CONDITION PRECEDENT.

See Contingent and Vested Interests.

CONTINGENT AND VESTED INTERESTS.

Condition precedent or subsequent.—*Public policy.*—A contingent gift or interest has a real existence, capable, as much as a vested interest or estate, of being operated upon by a condition subsequent, and being made to cease and become void.

The Earl of Bridgewater, by his will, devised very large real estates to trustees to make a settlement according to the limitations mentioned in the will. One of these limitations was "to Lord Alford for and during the term of 99 years, if he shall so long live;" remainder to trustees during his life to preserve contingent remainders; "remainder to the use of the heirs male of his body, with remainder, in default of such issue, to the use of C. H. C. for the term of 99 years, if he shall so long live;" remainder to trustees to preserve contingent remainders; "remainder to the use of the heirs male of the body of C. H. C., subject, nevertheless, as to the several uses and estates so to be limited to Lord Alford and C. H. C., and to the trustees during their respective lives, and to the heirs male of their respective bodies, to the several provisos for the determination thereof hereinafter contained." The testator then declared, "that in the

settlement to be made pursuant to this my will, my said estates are not to be limited successively to the use of the first and other sons of Lord Alford or of C. H. C., in tail male, but to the heirs male of their respective bodies, in the words of this my will, it being my intention that the vesting of my estates in the heirs male of their respective bodies shall be suspended during the lives of the said Lord Alford and C. H. C. respectively." The testator then provided, "that if Lord Alford shall die without having acquired the title of Duke or Marquis of Bridgewater to him and the heirs male of his body, then, and in such case, the use and estate hereinbefore directed to be limited to the heirs male of his body shall cease and be absolutely void." There was a similar proviso as to Lord Alford acquiring such title within five years after he should succeed to be Earl Brownlow, and unless he did so, the testator directed that the estate limited, &c., (as before) "shall thenceforth cease and be absolutely void; and my real estates hereinbefore devised shall thereupon go over and be enjoyed according to the subsequent uses and limitations declared and directed by this my will, as if the said Lord Alford were actually dead without issue male." Lord Alford entered into possession of the estates, but died without acquiring either of the titles, leaving an heir male.

Held, that the estate thus created in favour of Lord Alford's heirs male was not affected by the proviso, which was a condition subsequent, and which was void, as being against public policy, and therefore that the eldest son of Lord Alford was entitled to the estates as heir male under the limitation. *Egerton v. Earl Brownlow*, 4 H. of L. 1.

ENTAIL BY REFERENCE.

Obligation to complete according to intention.—*Precept of seisin.*—The letters of a strict entail cannot be imposed by a mere reference from one instrument to another.

But if the two instruments are capable of being regarded as one, they may together constitute a binding entail.

Where a party takes under an imperfect entail, he is not bound to render it perfect, however plainly the intention may appear that he should do so.

A precept of seisin cannot be assigned by the grantor, but solely by the grantee. *Sir John Cathcart v. Gammel*, 1 Macq. 362.

Cases cited in the judgment: *Stewart v. Porterfield*, 5 Wils. & Shaw, 515; *Laurie v. Spalding*, *Morr.* 15612; *Broomfield v. Paterson*, *Morr.* 15618; *Lindsay v. Lord Aboyne*, 4 Second Series, 843; *Fraser v. Lord Lovat*, 1 Bell's App. Cas. 105; *Paterson v. Leslie*, 7 Second Series, 950.

FREIGHT.

When demandable from insurers.—Effect of abandonment.—Upon a policy for freight, the insurers cannot be held responsible where the freight has been actually earned.

Where ship and freight are separately insured, any arrangement between the insurers of the ship and the owners, to the prejudice of the insurers of the freight, should be watched with jealousy.

Definition of the obligation upon a policy for freight.

Where a vessel has received injuries entitling the owner to treat her as totally lost, and where he consequently abandons her to the underwriters on ship, they are entitled to all freight afterwards earned.

An owner insured is not bound to repair the ship, if she be so damaged that a prudent owner, uninsured, would not repair her.

On abandonment, the owner becomes trustee for the underwriters on ship, and is bound to assign.

But how far the abandonment operates itself as an assignment, regard being had to the Registry Acts—*querre*?

Immaterial whether the ship is lost a short time after the inception of the risk, or a short time before the completion of the voyage.

A verdict is to be taken in conjunction with the admissions of the parties—which admissions even the jury cannot gainsay. *Scottish Marine Insurance Company of Glasgow v. Turner*, 1 Macq. 334.

Case cited in the judgment: *McCarthy v. Abel*, 5 East, 388.

And see *Ship*.

GROUND ANNUAL.

See *Perpetual Rent-charge; Rent-charge*.

INTERLOCUTOR.

See *Appealable Interlocutor*.

JOINT-STOCK COMPANY.

Complaint of single shareholder.—Duty of accountant under reference.—Although, upon a *prima facie* case of impending ruin in the concerns of a joint-stock company, the circumstances might be adequately dealt with by a general resolution of the shareholders, yet the Court will direct an inquiry at the instigation of a single shareholder, if it appear that it is impossible or very difficult to get the bulk of the shareholders to come forward.

But to induce the Court to interfere in such a case the circumstances must be strong.

The House approved of sending the accountant to inspect the books of the concern on the spot, so as not to interrupt its business. And he was to consider himself as an officer of the Court bound to all possible secrecy and discretion. *North British Bank v. Collins*, 1 Macq. 369.

JUDGES' OPINIONS.

Practice.—Reading opinions of absent Judges on questions of law.—The Judges were sum-

moned to answer questions of law: they differed in opinions on these questions. Most of the Judges being on Circuit, two of their number attended on a day fixed by the House for receiving the answers, and proposed to read answers which embodied their own opinions and those of their brethren. The House adjourned the matter till the majority of the Judges should have returned from the Circuit, so as to be able to attend in person, and individually express their reasons for their opinions. It was intimated that this permission to dispense with the attendance of any of the Judges to whom questions had been put, and who differed in their answers, must not be drawn into a precedent. *Egerton v. Earl Brownlow*, 4 H. of L. 2.

JUDICIAL FACTOR.

Or receiver.—When appointed on dissolution of partnership by death.—The Court will not appoint a receiver or judicial factor merely on the ground that a partnership is dissolved by the death of one of the partners.

Before the Court will interfere, there must be evidence of some breach or neglect of duty by the surviving partners who are authorised by law to wind up the concern.

On such points there is no difference between the law of Scotland and that of England. *Collins v. Young*, 1 Macq. 385.

Case cited: *Hardie v. Glover*, 18 Ves. 281.

JURY, PROVINCE OF.

See *Pawnbroking Regulations*.

PARTNERSHIP.

See *Judicial Factor*.

PAWNBROKING REGULATIONS.

Exception to Judge's ruling.—Province of jury.—To carry on pawnbroking business without disclosing the partners is a contravention of the 39 & 40 Geo. 3, c. 99.

No pawnbroking contract stipulating to conceal the name of any partner can be valid.

But if the contract were legal in its inception, the mode of carrying it on would not render it illegal.

Therefore an equivocal exception which might mean either that the contract was illegal in its inception, or that the mode of carrying it on had rendered it illegal, held a bad exception.

An exception to a charge ought to be so framed as that the Judge at the trial may decide and set the matter right, if he can.

Where the contract is in writing, and where the stipulation for concealment appears plainly on the face of the instrument, the Court may decide.

But where the contract is the result of circumstances established by parole, the jury must find, as matter of fact, that it comprised in its inception a stipulation for concealment; from whence the Court is to deduce the inference of illegality.

The rule according to which the Judge, and not the jury, decides questions of "probable cause" upon malicious prosecutions, is a special and exceptional rule of ancient date. *Fraser v. Hill*, 1 Macq. 392.

Cases cited: *Armstrong v. Armstrong*, 3 Myl. & K. 64; 2 Crompt. & M. 284; *Mitchell v. Williams*, 11 M. & W. 205.

PEERAGE.

Refusal of.—*Quære*, whether a subject can refuse a peerage, created either by patent or by writ? *Egerton v. Earl Brownlow*, 4 H. of L. 2.

PERPETUAL RENT-CHARGE.

Ground annual.—*Effect of transfer of land.*—Where an estate is purchased in consideration of a perpetual rent-charge which the purchaser binds himself and his representatives to pay to the vendor, the subsequent transfer of the estate to a third party—*cum onere*—will not release the original purchaser from the obligation of paying the rent-charge.

The analogies supplied by reference to the doctrines of ancient feudal tenures (on which the Court below had erroneously proceeded) held inapplicable.

What are called "ground annuals" in Scotch law are derived from the English perpetual rent-charge. *Millar v. Small*, 1 Macq. 345.

Case cited in the judgment: *Peddie v. Gibson*, 8 Second Series, 560; *Skene v. Greenhill*, 4 Shaw, 26; *Grant v. Lord Braon*, *Morr.* 15279; *Low v. Knowles*, *Morr.* 13873.

See *Rent-charge*.

POOR LAW.

Children.—*Original and derivative settlements.*—Legitimate children in nonage are to look for relief under the Poor Law, not to the parish of their birth, but to the parish in which their father had a settlement.

It is immaterial whether the settlement of the father was by origin or by residence.

The policy of the law is to prevent as far as possible the dispersion of the family.

The doctrine of derivative settlement is created, not by Statute, but by construction; and it exists equally in Scotland as in England.

The *Jedburgh case*, 13 Second Series, 783, overruled. *Adamson v. Barbour*, 1 Macq. 376.

Cases cited in the judgment: *Cumner v. Milton*, 2 Salk. 524; 3 Salk. 259; *Hume v. Halliday*, 12 Second Series, 412; *Coldingham v. Dunse*, *Morr.* 10582; *Howie v. Abroath*, *Morr.* app. "Poor" No. 1; *Case of Lasswade*, 6 Second Series, 956.

PRACTICE.

See *Judges' Opinions*.

PUBLIC POLICY.

See *Contingent and Vested Interests*.

RECEIVER.

See *Judicial Factor*.

REFERENCE.

See *Appealable Interlocutor*.

RENT-CHARGE.

Ground annual.—*Effect of mortgage.*—*Personal obligation.*—Upon a deposition or conveyance, *ex facie* absolute, but qualified by a recorded back bond, the disponent is not personally affected by a ground annual charged on the estate.

The estate, however, passes and continues subject to the charge into whose hands soever it may come.

The original personal obligation to pay the ground annual, still binds the original obligor and his representatives, who do not cease to be liable on parting with the land. *Royal Bank of Scotland v. Gurdynne*, 1 Macq. 358.

See *Perpetual Rent-charge*.

RIVER.

Adjacent proprietors.—*Judicature Act*, 6 Geo. 4, c. 120.—In the ordinary case, *prima facie*, proprietors on each side of a river are respectively entitled to the soil, *usque ad medium aqua*.

Opinion of the Lord Chancellor as to the course of proceedings under the 6 Geo. 4, c. 120, s. 40, when a Lord Ordinary reviews a judgment by the sheriff. *Wishart v. Wyllie*, 1 Macq. 389.

SETTLEMENT.

See *Poor Law*.

SHAREHOLDER.

See *Joint-Stock Company*.

SHIP.

Constructive loss.—*Abandonment.*—*Right to freight.*—To constitute what is accounted in law the total loss of a ship insured, it is not necessary that she shall be actually annihilated.

The assured claiming as upon a total loss must give up to the underwriters the remains of the property, together with all benefit and advantage incident to it.

Such property vests in the underwriters; being changed by the constructive loss and abandonment.

Upon such constructive loss and abandonment, the freight, if earned, will belong not to the owners, but to the underwriters on ship. *Stewart v. Greenock Marine Insurance Company*, 1 Macq. 328.

Cases cited in the judgment: *Samuel v. Royal Exchange Assurance Company*, 8 B. & C. 119; *Benson v. Chapman*, 6 M. & G. 792; *Case v. Davidson*, 5 M. & S. 79; 2 Brod. & B. 379; 5 Moore, 117; 8 Price, 542.

See *Freight*.

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SATURDAY, APRIL 29, 1854.  
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MODE OF TAKING EVIDENCE IN CHANCERY.

Long experience has shown that the most popular and best intentioned reforms in the principles and practice of the Law are not always successful; and it not unfrequently happens that in removing the enormity of an evil and hastily applying a supposed remedy, we occasion almost as much mischief as previously existed. There are such things as changes without improvements, and we are led, in some instances, to the conclusion, that "it were better to bear the ills we have, than fly to others that we know not of."

It is needless to say, that in all the wide extent of our Law Reforms, adopted or projected, no part can be more important than the improvement of the means by which facts are to be investigated and ascertained, and our Courts of Justice enabled safely to adjudicate upon the matters before them. These remarks particularly apply to the system of taking evidence in the Court of Chancery. According to the old practice, whilst affidavits were received in support of or in opposition to the most important motions in Court, which often decided the fate of a cause, no other evidence was admissible at the regular hearing of a suit (save some formal proof of handwriting) than the depositions of witnesses taken before an examiner on written interrogatories. The defects and inconvenience of this method of examining witnesses were long complained of. It was impossible to correct by other questions or other testimony the omissions of a witness, because his depositions were kept in secret until the whole of the evidence on both sides was published. It was also idle for either party satisfactorily to cross-examine a witness, for both the interrogatories and the answers were unknown.

A cross-examination was a groping after truth in the dark. This absurdity has been abolished, and the examination of witnesses is now taken *visd voce* in the presence of all the parties, their counsel and solicitors. But numerous objections have been stated against the new course of proceeding. In a separate article we have given the Commissioners' questions, which seem to incorporate all the points of doubt and inconvenience which have arisen, and to some of which we shall now advert.

Amongst other imperfections of the *visd voce* system, it appears that the examination is not continued till the whole evidence of the witness is taken down, and consequently an opportunity is afforded to a witness to alter his testimony and to answer the points on which he may have failed. This disadvantage arises from the insufficient number of examiners, who are called upon to make appointments in various causes, and are compelled to apportion their time as well as they can amongst the several claimants for their services. If on a given day the witness's testimony is not completed, and the next day there has been an appointment in another cause, the witness must take his turn at the first vacant time. Sometimes an interval of a week or more may occur before another appointment can be obtained.

On the other hand, it sometimes happens that a whole morning has been set apart for a particular set of witnesses and some of them fail to attend. The time of the examiner then remains unoccupied for the remainder of the day, there being no opportunity of calling the witnesses in another cause.

It is observable, that whilst the examination was conducted on written interrogatories, there was an opportunity of carefully settling them, so as to avoid objections; but a *visd voce* examination is often so con-

ducted as to raise frequent discussion on the materiality, relevancy, or leading nature of the questions; and answers are often given which cannot be received as evidence within the personal knowledge of the witness. In such instances it is almost impracticable for the examiner satisfactorily to discharge the duty which is so readily and conclusively performed by a Judge at Nisi Prius.

If power were given to the examiner to determine points raised before him on the propriety of the questions propounded to the witnesses, it would evidently be necessary to allow an appeal to the Court against his decisions, because in many instances, on the admission or exclusion of evidence, the main question in the cause may depend. The mode of proceeding on such an appeal is however not without difficulty. Must the appeal be made forthwith and the further examination be suspended? or should the evidence tendered be taken subject to the objection to be decided at the hearing of the cause? and should the Court of Appeal be empowered to examine the witnesses if either party desired, and at the peril of the costs of such examination in the discretion of the Court? These are important points for consideration.

There can be no doubt, however, that the delay, inconvenience, and expense in taking evidence in the Court of Chancery arise chiefly in litigated cases where most of the facts are disputed. In the majority of cases the evidence by affidavit is satisfactory; and in many suits where the facts deposed to cannot be disputed, an examination upon interrogatories before the examiners may be sufficient.

The greatest proportion of expense takes place in cases wherein the facts are disputed, and the examination is conducted by counsel, not only for the plaintiff, but for several defendants, appearing by their respective counsel and solicitors. In these really litigated cases, few in number but of great importance, it has been suggested that a *virid voce* examination should take place in Court before the Judge who hears the cause, and who would thus possess the great advantage of seeing the bearing and the conduct of the witnesses under examination.

The Judge, being acquainted by the perusal of the pleadings with the points in issue, would confine the examination to those points, and restrain unnecessary questions.

Although the examiner may be furnished with the pleadings, he naturally hesitates to interrupt the counsel, and often

permits irrelevant, or unnecessary, or improper questions to be put and answered, leaving to the Court afterwards to overrule or expunge any objectionable parts of the evidence. On the other hand, the Judge would decide the point at once, and his decision would govern the subsequent parts of the examination. Thus there would be a great saving of time in the examination itself, and in the evidence taken down in cases which might afterwards be the subject of appeal.

Connected with these points the suggestion has been revived of *increasing the number of Judges*, to enable each Judge to appoint certain days for the *virid voce* examination of witnesses in such cases as he may deem necessary, or as either party may require, but subject to the payment of costs if such *virid voce* examination be unnecessarily called for.

It will be recollected that a material distinction exists between causes in Equity and actions at Common Law. The latter almost invariably involve disputed facts, while a great part of the business in Chancery is *administrative*, and not strictly speaking hostile. It is anticipated, therefore, that two more Judges would be able to carry into effect the proposed improvement, and that this would be far preferable to the appointment of an additional number of examiners, who, though they might diminish the delay which now takes place, and continue the examination *de die in diem*, would be liable to all the other objections of the present course of proceeding.

It may also be observed that, besides the Lord Chancellor and Lord Justices as Judges of Appeal, there are only four Judges of original jurisdiction in all in the Courts of Equity, whilst in the Common Law Courts there are 15 Judges, with an appeal to the Exchequer Chamber. In addition to which there are 60 County Court Judges, acting chiefly in matters of Common Law, and whose labours have largely diminished the business of the Superior Courts. The amount of property involved in suits in the Courts of Chancery far exceeds in value that of the Common Law Courts. Not less than seven millions annually are paid into the Court of Chancery, and the gross sum now in the Bank of England in the name of the Accountant-General, is little short of fifty millions. In addition to which are the numerous *estates*, and real and personal property, comprised in various other suits and proceedings. It is submitted, therefore, that for the decision

and control or management of this vast property, the expense of two additional Judges would be of small moment in the estimation of Parliament.

THE CHANCERY COMMISSIONERS' QUESTIONS ON EVIDENCE.

THE following Questions on the present System of taking Evidence in the Court of Chancery, have just been issued, and it is requested that the answers thereto may be addressed to Mr. Chapman Barber, the Secretary to the Commission, No. 11, New Square, Lincoln's Inn.

We understand that the answers of solicitors are invited.

I.—The following objections have been stated to the present system of taking evidence in the Examiner's Office :

1st. That the examiner has no power to determine on the materiality or relevancy of the questions put.

2nd. That the examiner declines to take down matters which he conceives to be inadmissible as evidence.

3rd. That by taking down the evidence in the form of a narrative, the true effect of the examination is not conveyed to the Court.

4th. That the Court, not seeing the demeanour of the witness, is unable to form a true estimate of his credibility.

5th. That the examination not being continuous, opportunities are afforded for enabling a witness to alter his testimony, and for adducing evidence to meet particular points on which the witness may have broken down.

6th. The delay which arises from the examination not being continuous, and the difficulty of obtaining appointments except at long intervals.

7th. The expense which arises from the same source.

8th. The loss of time of the examiners from parties failing to keep their appointments with the examiners.

9th. That the examiner has no power to commit a witness for refusing to answer.

10th. That a witness may demand an unreasonable sum under the name of expenses before giving his testimony.

Do you consider that the defects above pointed out exist, and can you suggest any and what mode of remedying them ?

II.—Have you observed any additional defects in the present system of the examination of witnesses in the Court of Chancery ?

1st. In the examiner's office.

2nd. Before a special examiner in London.

3rd. Before an examiner in the country.

State the defects which have occurred to you.

Can you suggest any and what mode of remedying these defects ?

III.—If the examiner had the power to determine on the materiality or relevancy of questions, would it, in your opinion, be necessary or advisable that the parties should have liberty to appeal to the Court upon such decision ?

IV.—If the examiner refused to allow questions which he considered immaterial or irrelevant to be put, in what form and at what time should the party be at liberty to appeal ?

V.—If, at the time the witness is under examination, it is possible that there might be several such appeals in the course of one examination, and would it be practicable to have such appeals heard and determined without great delay and expense ?

VI.—If the appeal is made after the examination is concluded, does it occur to you that it might not be necessary to have a fresh examination of witnesses and so on *toties quoties* ? Does it also occur to you that it would be necessary in some cases that the merits of the cause should be entered into in order to determine the question ?

VII.—Has it occurred to you that a question which at first sight seems immaterial or irrelevant, sometimes becomes from subsequent evidence of the greatest materiality and importance ? Is not this particularly the case in cross-examination.

VIII.—Is the power of the Court to direct the costs of irrelevant evidence to be borne by the party occasioning it, a sufficient check upon the unnecessary consumption of time by immaterial or irrelevant questions ?

IX.—If not, can you suggest any and what other check ?

X.—If the examiner declines to take down matter which he considers is not evidence, should the parties have any and what means of appealing from such decision ?

XI.—If, instead of taking down the evidence in the form of a narrative, it were taken down in the shape of question and answer, do you think it probable that in many cases the bulk of the evidence would be so great as to create inordinate expense ?

XII.—Do you think it important, that in the majority of cases in the Court of Chancery the Court should see the demeanour of the witness ?

XIII.—Can you suggest any mode by which the Court may be made acquainted with the demeanour of a witness short of the examination taking place before the Court itself ?

XIV.—Would it be practicable, in your opinion, that evidence should be taken orally before the Court itself ?

1. In all cases ?

2. In any particular cases or class of cases, and if so, how should they be distinguished ?

XV.—If the Court decide any cause upon oral examination of witnesses, would it be practicable to give an effective appeal from such

decision without a re-examination of the witnesses orally before the Court of Appeal?

XVI.—Would it be safe to entrust the Court of Appeal with a power of deciding a cause upon notes taken by the Judge in the Court below, without the Court of Appeal having the same opportunity of the Judge of seeing the demeanour of the witnesses?

XVII.—If the Court of Appeal were required to hear the evidence again, do you consider that any additional Courts of Appeal must be constituted in order to prevent arrears? If so, what number do you consider would be sufficient for the purpose?

XVIII.—In what manner in that case would the appeal to the House of Lords be secured so as to enable the parties to secure a speedy decision?

XIX.—In case the witnesses who have given evidence in the Court below should be re-examined before the Court of Appeal, would it be practicable to prevent fresh evidence being given to meet particular points in which the party may have failed in the Court below, or from enabling the witnesses to alter their testimony, in order to meet some points on which the Judge of the inferior Court may have founded his decision?

XX.—Can you suggest any mode by which the expense of retaining the witnesses in attendance on the Court until the hearing of the cause in which their evidence is required can be obviated?

XXI.—Is the number of examiners, in your opinion, sufficient for the transaction of the business confided to them with reasonable despatch?

XXII.—If not, in what manner would the defect be best remedied?

1. By the appointment of additional examiners?

2. By the appointment of a competent number of special examiners, to be selected in rotation, analogous to the practice now adopted in the case of conveyancing counsel?

XXIII.—Should the cross-examination of a witness upon an affidavit made by him, not to be used at the hearing of the cause, be limited to the matter of the affidavit?

We think the members of the Profession must feel much obliged to the Commissioners for affording them an opportunity of stating the result of their practical experience, and suggesting remedies, as well for the advantage of their clients, as convenience to themselves. This is a great improvement on the former mode of effecting alterations and improvements. It is, however, nothing more than was due to the practitioners, and the present course is both wise and just.

SOUTH SEA COMPANY BILL.

STOCKHOLDERS' OBJECTIONS.

We understand that a petition has been presented against this Bill on the part of some of the proprietors of the joint-stock of the Company, who decidedly object to the continuance of the establishment for the purpose of administering private trusts, and who are desirous that the proper affairs of the company should be speedily wound up and the assets divided amongst the proprietors.

The following are some of the objections to the Bill on the part of the proprietors:—

"That, among other clauses of the Bill with a view to the execution of trusts, is a provision to the effect that if any proprietor shall signify his desire to withdraw his capital from the company, he shall not, after giving such notice, be entitled to attend any court of proprietors, notwithstanding he shall not have received his share of the assets of the company, and such other proprietors as shall not desire to withdraw shall thenceforth be interested in all the assets of the company.

"That neither the charter of the company nor any of the Acts of Parliament relating to the company authorise or contemplate the company undertaking the execution of trusts or in any way dealing in such trusts.

"That a Bill to the same effect as the present was introduced into Parliament in the last Session of Parliament by the directors of the company, and was opposed mainly on the ground that it contained provisions authorising the company to undertake the execution of trusts, and the Bill was lost in consequence of such opposition.

"That the proprietors have sustained loss and inconvenience in consequence of the delay occasioned by the Bill being thrown out last Session. And should the Bill be again thrown out, as is probable, in consequence of its again containing provisions relating to trusts, the proprietors will sustain further loss."

The above suggestions may be useful in preparing other petitions from the proprietors who dissented from the proposal of the directors. The Bill has been referred to a Select Committee.

LORD ST. LEONARDS' ORDER AND THE LAW WRITERS.

We have been requested to extend the publicity of the following letter from Mr. John Robert Taylor, of Chancery Lane, the Chairman at the recent meeting of Law Writers, which appeared in *The Globe* of the 19th instant:—

"Lord St. Leonards' Order of 10th Nov., 1852, provided that 'all office copies and other

copies of proceedings and documents shall be counted after the rate of ninety words to the folio, and where the same or any portion thereof shall be written with columns containing figures, in every such case each figure or combination of figures representing a distinct denomination, shall be counted as one word.' Therefore 4,151l. 16s. 9d. would count as three words.

"Under this order, of which the writers have just cause for complaint, the sum of 774,022,638l. 5s. 3d. would count only as three words, whilst under the Stamp Acts, one passed even so recently as 1850, it would count 23 words, and on that amount the stamp duty would be payable.

"The order had not long been passed before grave doubts arose as to its construction, and on the appeal of the Clerk of Records and Writs (A division) to the Vice-Chancellor Sir William Page Wood, it was ordered that the figures 510l. 10s. 6d. or any other similar denomination of figures in the body of a document should be counted as if in words at length; but in documents where columns are used, in those columns only as three words.

"The documents where columns are mostly used are receivership accounts, schedules to answers, states of facts, and costs which require more than ordinary mechanical skill and attention in copying, independent of the time occupied by the writer or stationer in arranging the columns and ruling the paper; added to which the folios have to be counted and marked on the document in red ink, an additional process known to all practical writers as requiring its passing through the hand three times.

"It must be apparent, even to unprofessional persons, that if figures in straightforward copying in the body of a document are to be counted as if in words at length, that there can be no reason why figures in columns requiring so much more time, labour, and care to be bestowed upon them, should not be placed in the same category.

"There is no doubt but that my Lord St. Leonards was actuated by the best and purest motives in promulgating his order, as Lord Hardwick's order was most shamefully departed from in the then Six Clerks' Office and the Old Masters' Offices, and the profession and their clients had a right to have the system altered; but unfortunately the order under discussion has gone from one extreme to the other. There are two things always to be borne in mind—firstly, the paltry pittance formerly paid to the poor penmen, penwomen, and penchildren who did the then badly written office copies, and the uniform complaint of the Profession as to the way they were done. The Profession have only to compare the present office copies with the past, and they will observe a marked improvement in their style of execution. And, secondly, that the law writer's employment is a very precarious one, and that for him to obtain a decent livelihood he should be paid somewhat more than the

ordinary mechanic. For instance, during the long vacation he has little or no employment, and is compelled to subsist on the fruits of his industry in the busy period of the year.

"In making the above remarks, I wish particularly to be understood that they are made with the most profound respect for my Lord St. Leonards, and without the least desire of imputing personal blame to his lordship. He, no doubt, was misled as to the practical operation of the order complained of, and from his lordship's acknowledged kindness of heart, it is believed that when the above facts are placed before him, he will not be slow to recommend the rescinding or modification of even his own order, and thereby confer a great boon on a most deserving class of her Majesty's subjects.

"In conclusion, I would observe that in Manchester, Birmingham, Liverpool, and the provinces, 72 words is the recognised folio; and inasmuch as the practice of our Courts of Law are becoming daily more and more assimilated, why should not the Chancery and Common Law folio be also assimilated to one standard, already recognised by several Acts of Parliament? 'Trifling as the difference of 18 words in a folio may appear to some, it would lessen the labour of the law writer more than two hours each day, and would be to him a great boon."

The alteration would also be just and beneficial to the solicitors.

NOTICES OF NEW BOOKS.

A Manual of Civil Law; or, Examination in the Institutes of Justinian: being a Translation of and Commentary on that Work, with an introduction on the History of the Roman Law. By PATRICK CUMIN, M.A., of Balliol College, Oxford, Barrister-at-Law. London: Stevens & Norton. 1854. Pp. 420.

AMIDST the movement which is taking place in both branches of the Profession on the subject of Legal Education, Mr. Cumin has opportunely brought forward a Translation of and Commentary on the Institutes of Justinian. It is remarkable, as the Author observes, that there should exist so few elementary works on the Civil Law in our own language, and his object has been to supply this defect in the present volume. Mr. Cumin has had recourse to Lagrange's French Manual of Civil Law, which is ordinarily used as a text-book. He observes, that he might have confined his labours to a mere translation, but he found occasional defects and obscurities in the French work which he has endeavoured to remedy. He has, of course, consulted the original Institutes of Justinian, the Digest and Code, and particularly the Commentaries of Orto-

lan and Ducauroy; and, considering the class of students for whom the work is designed, Mr. Cumin has wisely presented it in the form of question and answer.

The work is intended both as a translation and commentary. Ample use has been made of Gaius and other authorities, but the arrangement of Justinian has been strictly followed. The more remarkable Latin expressions have been selected and embodied in the work, but the diligent student will probably deem it useful to consult the original.

The Introductory Chapter supplies a clear and concise History of Roman Law, and the various sources from which it was derived. Of these Mr. Cumin notices seven, which are to be found in the *Corpus juris Civilis*, viz.:—1. *Leges*. 2. *Plebiscita*. 3. *Senatus consulta*. 4. The Twelve Tables. 5. *Responsa Prudentum*. 6. *Edicta*. 7. *Constitutiones*. Having given a summary of these sources of Roman Law, the Author observes that—

"Looking to the variety of the sources, the lapse of time, the many revolutions, and the extraordinary development of the Roman state, we cannot be surprised that in Justinian's time the law should be voluminous and perplexed, or at the necessity felt for arrangement and codification. It must not be supposed, however, that immediately before Justinian's time direct reference was made by the Judges to the text itself of the *leges*, the *edicta*, the *senatus-consulta*, and the *plebiscita*. For the Commentaries of the great jurists upon the text had in fact superseded the authority of the text itself; hence we are justified in saying that from the time of Constantine, the law consisted substantially of these commentaries and the imperial constitutions.

"Now, as early as the year A. D. 306, Gregorianus, and A. D. 365, Hermogenianus, had made collections of all the imperial constitutions; these codes, however, had no legislative authority. But in the year A. D. 438, Theodosius II. published a code for the eastern and western empire, which embraced all the constitutions of the emperors after Constantine, besides which he published certain *Novellæ*.

"In the year A. D. 528, Justinian appointed a commission of ten jurists, with Tribonian at the head, to draw up a new code, taking those we have mentioned and the *Novellæ* as the basis. In the month of April 529, their task was completed, and a code was published, by the effect of which all constitutions, not included therein, were abolished, and every constitution it did include was made applicable to every subject of the empire.

"Having arranged the constitutions, Justinian commissioned Tribonian, with sixteen others, to make select extracts from the writings of the elder jurists, which they were authorised

so to alter and arrange as to make them accord with the change of manners and the dictates of justice, the object being to exhibit in a systematic form a complete exposition of Roman Law. One difficulty, however, at once became apparent. There were certain moot points upon which the schools of Sabinus and Proculus held contradictory opinions, to settle these, therefore, Justinian promulgated his Fifty Decisions (*Quinquaginta Decisiones*). Relieved from this perplexity, Tribonian and his colleagues applied themselves to their task and in the incredibly short space of three years (Dec. A. D. 530—533) published the *Digesta* or *Pandectæ* (general collection), into which, as the emperor said, *omne jus antiquum collectum est*. This Digest had the force of law.¹

"But it occurred to the emperor, that, for a student, the Code and the Digest would be too voluminous; he therefore directed Tribonian, with Theophilus, and Dorotheus, Professors of Law, the one at Constantinople, the other at Berytus to draw up an elementary work, or *institutions* of Roman law. This, which followed the well-known work of Gaius, was not simply a book of instruction, for it was declared to have the force of law.

"But Justinian, still unsatisfied with his legal reforms, directed Tribonian and four other jurists to revise the Code of 529, and to incorporate the fifty decisions. This revised code (*codex repetita praelectionis*) was published, and obtained the force of law on the 17th Nov. 534. This is the Code we now have, but it should be observed that the Code of 529 is the one referred to in the *Institutes*, so that there are certain Constitutions referred to in it which are not to be found in the Code of 534.

"Nor was Justinian satisfied even yet, for between the years 535 and 564 (A. D.), he published no fewer than 165 *novellæ constitutiones*, or new constitutions, which were generally written in Greek.

"Till the reign of Basil the Macedonian, A. D. 867, these compilations were considered law; but he reconstructed the whole system, and embodied the law in the form of *Basiliæ*.

"It is divided into fifty books and seven parts, corresponding to the edict, for it followed Ulpian's work on the same subject. Each book consists of titles, each title of extracts, and each extract of a *principium* (Pr.) and paragraphs. These extracts which are headed by the name of the jurist or legal author, are called *laws* (L.) or fragments (Fr.). The digest itself is denoted D. or ff., and is referred to in various ways: thus, the reference to paragraph 6 of the 5th law of the title *De Jure Dotium*, which is title 3 of the 23rd book, is this: L. 5, § 6, ff. *De Jure Dot.*, or Fr. 5, § 6, D. *De Jur Dot.* (23, 3), or Fr. 5, § 6, D. 23, 3, or D. 23, 3, 5, § 6. So the *Institutes*, which are divided into four books, each of which contains several titles, and each title a *principium* (Pr.) and paragraphs, are referred to thus: Lib. 1, 13 § 1."

These, though modified by successive emperors, continued to be the basis of the law till the taking of Constantinople in 1453."

Mr. Cumin has not prefixed a Table of Contents to his work, thinking it superfluous; but we cannot agree with him in this opinion, and conceive that the Index is not sufficiently ample to supply the omission.

LAW OF ATTORNEYS AND SOLICITORS.

PRODUCTION BY ATTORNEY OF CLIENT'S TITLE-DEED.

IN an action for work and labour at an establishment carried on by the defendants, Mr. Michael, an attorney, was subpoenaed to produce a deed of assignment in order to show that the work was done after they had ceased to be interested in the concern, and had assigned to one Hart in trust for payment of their debts, &c. The attorney objected to produce the deed on the ground that he held it as Hart's attorney, and that its production would be an undue disclosure of his title, and L. C. J. *Jervis*, had also ruled that he was not bound to answer the question what the deed was, and his lordship also declined to look at the deed to see whether its nature warranted its being withheld.

In refusing a rule to set aside the verdict for the plaintiff and for a new trial, *Maule, J.*, said,—“It appears that the instrument in question was asked for as a deed of assignment; and the witness, who was the attorney for the party who was said to take certain property under it, as called upon to produce it, but declined to do so. It seems to me that he was quite right in so doing, on the ground that an attorney is not bound to produce the title-deed of his client. It does not appear that the Lord Chief Justice was asked to look at the deed to see whether it was a deed of assignment; and, if he were, I do not think he ought to have done so. The deed came to the hands of the witness in his professional character. I do not think it was contended at the bar that the recent Statute [14 & 15 Vict. c. 99] has in any respect altered the rule of law upon this subject. The Lord Chief Justice has thrown a doubt; but I cannot say that I share in it. It may be that the party may not himself be excused from producing a deed. But I think the right which a client has always enjoyed of being protected from a breach of

professional confidence, remains entire. I think the protection still remains unimpaired, so far as regards the prohibition to the attorney to give evidence of the contents of, or to produce documents belonging to his client, which have come to his hands in his professional character. In *Newton v. Chaplin*, 10 C. B. 356, it is assumed that it is not necessary that the document should be a title-deed: the learned Judge there, after consulting the other Judges, ruled that it is enough to sustain the privilege, if the deed be intrusted to the attorney in his professional character. In *Doe d. Carter v. James*, 2 M. & Rob. 47, a will, which was in the hands of an attorney, was called for: the attorney stated that he held it as attorney for one Minshull, and declined to produce it. It was urged that the will being a will of personality as well as of realty, it ought to have been proved, and, if proved, it would be a public document, and proveable as such: and it was contended that the omission, so to deal with it, made the party whose duty it was to do it, a wrong-doer, and disentitled him to protection, seeing that, if he had done his duty, the party seeking to show the contents of the instrument would have had the means of doing so. That was a very ingenious argument: but Lord Denman declined to yield to it,—saying: ‘Mr. Minshull has this will as a devisee under it; and that being so, I do not think I can call on his attorney to produce it. It is suggested that it is a will of personality, and that I may refer to it to ascertain whether the fact be so: but I do not think that a Judge has any more privilege to examine the document than any one else. I cannot call on the witness to produce it.’ Suppose the Judges were bound to examine the document, and, upon doing so, were to say that it was not a title deed,—his decision might be made the subject of an argument in open Court, by bill of exceptions; and thus the contents of the deed might be communicated to all the world. I think the matter was properly dealt with by the Lord Chief Justice.” And *Williams, J.*, referred to *Harris v. Hill*, 3 Stark. N. P. C. 140, where Lord Tenterden ruled, that an attorney was not bound to produce a composition deed, in which his client was interested, in a suit between other parties. *Volant v. Soyer*, 13 Com. B. 231.

THE LAW SOCIETY AND MR. W. H. BARBER.

To the Editor of the *Legal Observer*.

SIR,—The attention of your readers has probably been drawn to a recent article, which has appeared in *The Press*, regarding the application now pending before the Master of the Rolls, for the renewal of Mr. Barber's certificate. Although the article does not impugn the motives which have hitherto actuated the Council of the Law Society in their opposition in the Court of Queen's Bench to Mr. Barber's former application, yet I think the conclusion at which *The Press* arrives, "that any future opposition will be oppressive in its nature," is premature and uncalled for.

It must be clear to any unprejudiced mind, that the Council can only be impelled by a sense of duty in bringing the facts of the case before the Court, in order that it may determine as to the fitness of Mr. Barber to act as one of its confidential officers.

It has been deemed expedient by the Judges, under the authority of Parliament, on the application of persons for examination and admission, to delegate to the Council of the Law Society the duty of investigating into the character of such persons, and I believe it is also their province to perform the like duty on all applications to take out or renew certificates. I cannot therefore see how the Council could do otherwise than investigate the conduct of Mr. Barber, and bring the result before the Court, and it is absurd to imagine that they are actuated in this case by improper motives, any more than on the examination, or on the ordinary applications to renew certificates.

I am one of those who think that the thanks of the Profession are due to the gentlemen who undertook this onerous and oftentimes irksome duty, and above all for the integrity with which it has been performed. As a young practitioner, it is, I feel of the greatest importance that the status of our body should be kept up by the strictest supervision on the admission of members.

But, besides this, it seems to me that the new evidence brought forward by Mr. Barber should be laid before the Court, duly authenticated, for its consideration. And, therefore, without prejudging the effect of such evidence, I trust the Council will again call the attention of the Court to the circumstances of the case so far as may be necessary to determine whether the certificate to practise ought to be renewed.

A YOUNG SOLICITOR.

[We insert this letter in answer to an able contemporary, but abstain from any remarks on the renewed application.—ED.]

RENEWAL OF ANNUAL CERTIFICATES.

Queen's Bench.

ADDITIONAL NOTICES.

Last day of Easter Term.

Chilcote, George Henry, 14, Howland Street, Fitzroy Square; 13, Union Court, Old Broad Street.

On the 12th May, at the Judge's Chambers.

Fitch, George William, 14, Sidney Street, Cambridge.

ATTORNEYS TO BE ADMITTED.

Trinity Term, 1854.

Queen's Bench.

[Concluded from page 483.]

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Monckton, John Braddick, 14, Everett-street; and Maidstone
Moore, Robert, 1, Doughty-street, Gray's-inn; and Hanover-terrace
Mounsey, Robert Heysham, 23, Southampton-row, Russell-square; and Carlisle
Mullens, Samuel, I.L.B., 68, Myddleton-street, Spa-fields
Nash, Arthur, A.B., Royston, Herts
New, Francis Charles, Connaught-sq., Paddington New, Fred. Bayly, 29, Brunswick-parade, Barnsbury-road
Olivier, Alfred, 15, Everett-st., Bristol; and Devises Peckham, Robt., 18, Nelson-sq., Blackfriars-road

J. Monckton, Maidstone
N. Cowdry, Bath; C. A. Curwood, Doughty-st.
G. G. Mounsey, Carlisle
G. Capes, Field-court
George Aug. Crowder, Coleman-street, London
William Gibson, 64, Lincoln's-inn-fields
R. Bowerman, Uffculme, Devon; W. Sandys, Gray's-inn-square
F. Ridout, Bristol; A. J. Knapp, Bristol
A. J. Lane, Surbiton, Surrey; J. Hall, Moorgate-street; J. Holmes, South-sq., Gray's-inn; A. T. Hewitt, Nicholas-lane, Lombard-street
G. F. Peters, Bristol; J. Miller, Bristol
Denton, Kinderley, and Domville, New-sq.
T. T. Dibb, Leeds
G. H. Kinderley, New-square

Peters, Charles Abbot, Bristol
Phillips, Henry, Trafalgar-square, Brompton
Piper, John, jun., 4, Euston-grove; and Leeds
Polhill, Arthur Edward, Brighton; and 2, Montague-street, Russell-square

Clerks' Names and Addresses.

To whom Articled, Assigned, &c.

Powell, William, 11, Doddington-grove, Kennington; and Knighton	Green and Peters, Knighton
Rammell, Harby, 1, Hereford-sq., Old Brompton	J. S. Burton, Copthall-court
Randall, John Henry, Binsfield-rectory, Bracknell	G. A. Crawley, Whitehall-place
Richards, Watkin, Llangollen	C. Richards, Llangollen
Roberts, George Christopher, Kingston-upon-Hull	J. Saxelbye, Kingston-upon-Hull
Roberts, Thomas Vaughan, 2, Lower Calthorpe-street; and Oswestry	T. L. Longueville, Oswestry
Robinson, Richard, Swaffham	R. Sewell, Swaffham
Robinson, Walter, 11, Bolton-street, Middlessex; 11, Park-place, St. James's-street	George Robinson, Wolverhampton
Rodwell, Henry Blyth, 46, Lisson-grove North, St. John's-wood	E. Norton, Diss; J. Day, and F. Browne, Margaret-street
Roskams, Henry, Godalming	T. Leadbitter, Staple-inn; W. King, Godalming
Safford, F. Lawrence Sleath, 10, Whitehall-place; and Hadleigh	J. F. Robinson, Hadleigh; T. Borrett, Whitehall-pl.
Sangster, Alexander, 11, Kennington-terrace, Vauxhall; and S. King's-road, Bedford-row	John Stevenson, 3, King's-road; Robert Shum, 3, King's-road
Scarborough, Thomas Henry, 3, Grange-villas, Dalston; and Bloomsbury-square	F. Harrison, Bloomsbury-square
Sharpe, Samuel Bates, Frederick-street; Goulden-terrace, Market Deeping; and Stamford	S. J. Sharpe, Market Deeping; R. N. Thompson, Stamford
Simpson, Benjamin Wm., 10, Lower Calthorpe-street; and Liverpool	M. D. Lowndes, Liverpool
Smart, Robert William Hunt, Montague-street, Russell-square; and Enfield	J. Smart, Lincoln's-inn-fields
Smith, John William, 41, Great Russell-street, Bloomsbury; and Gravesend	Hilder and Arnold, Gravesend
Smith, John William, 4, Lincoln's-inn-fields	J. Smith, Warwick; S. Steward, Lincoln's-inn-fields
Smith, Joseph, 25a, City-road; 35, Alfred-street, Islington; Cockermouth	John Steel, Cockermouth
Smith, William, Vine-hall, Hurst-green; Argyle-square; and Featherstone-buildings	E. Hoar, Maidstone
Stephenson, William, jun., 34, Bernard-street, Russell-square; Kingston-on-Hull	John Earnshaw, Kingston-on-Hull
Stuart, William George, 6, Gray's-inn-square	W. Stuart, Gray's-inn-square
Tibbits, John, Stratford-upon-Avon; and Newent	W. Tibbits, Stratford-upon-Avon; W. W. Kemney, Stroud
Towne, Eldon Ethelbert, 9, Devonshire-square, Bishopsgate-street	R. B. B. Cobbett, Manchester; J. Towne, Bishops-gate-street
Tugwell, James Edward, 16, Great Ormond-st.; and Devizes	W. E. Tugwell, Devizes; A. Meek, Devizes
Waller, William, 8, Stockwell-park-road	W. Bromley, Gray's-inn
Welch, John Bunn Kemp, 8, Store-st., Bedford-square; and Poole	M. R. Welch, Poole
Wilford, John Charles, 1, Richmond-villas, Islington; and Sunderland	Richard Bowes, Sunderland
Woolcombe, William John, 14, Doughty-street, Mecklenburgh-square; and Cockington	C. Kitson, Torquay

Added to the List pursuant to Judge's Orders.

Gough, Alex. Clement F., New Ormond-street, Sidmouth-street	J. Foster, Wolverhampton; E. H. Richards, Lincoln's-inn-fields
Kelsal, Frederick Henry, Chester; and Upper Porchester-street, Paddington	J. Robinson, Liverpool
Lewis, Thomas Smith, 7, Wilmington-square	M. Lewis, Wilmington-square
Richardson, Edward Taylor, 32, Cloudeley-st., Islington; and Selby	John Luke Haigh, Selby

LONDON COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

[For the previous Lists, see pp. 106, 161, 238, 301, 343, 383, 402, 463.]

Burrell, Peter Ashwell, 1, White Hart Court.
Bothamley, Thos. Hilton, 39, Coleman St.
Berry, Henry, 5, Verulam Buildings.
Donaldson, Wm. Levertton, 18, Southampton Street, Bloomsbury Square.

Dod, Charles, 10, John St., Oxford Street.
Edwards, Thomas Kersey, 3, Lawrence Pountney Hill.

Johnson, Murray Maxwell, 20, Austin Friars.
Law, Henry Shephard, 23, Bush Lane.
Lambert, Edward, 7, John St., Bedford Row.
Mawe, Thos. Jones, 4, New Bridge Street.
Martin, Richd., 4, Orchard St., Portman Sq.
Nicholson, John Wilson, 48, Lime Street.
Parker, Thomas, 10, Lincoln's Inn Fields.
Pilgrim, James, Church Court, Lothbury.

Roy, Richard, 4, Lothbury.
 Sharp, William, 2, Verulam Buildings.
 Southwood, Walter, 30, Somerset St., Port-
 man Square.
 Smith, Fk. Wickings, 63, Lin. Inn Fields.
 Spiller, Fk. Tremlett, 5, Gray's Inn Square.
 Tomlins, Thomas Edlyne, 17, Lincoln's Inn
 Fields.
 Tucker, Fk. John, 6, Raymond Buildings.
 Van Sandau, Hen., 27, King St., Cheapside.
 Vizer, William, 48 a, Moorgate Street.
 Witty, Rd. Henry, 21, Essex Street, Strand.

Simonds, Robert Withington, Winchester.
 March 24.
 Southam, Thos. Wm., Uppingham. March
 31.
 Tomlinson, William Henry Bedford, Wake-
 field. April 11.
 Warden, James, Beaminster. March 28.
 Wheatly, Robert Benjamin, Staines. March
 24.

NOTES OF THE WEEK.

LAW APPOINTMENTS.

Sir Alexander James Edmund Cockburn,
 Knt., has been appointed Recorder of Bristol,
 in the room of Richard Budden Crowder, Esq.,
 appointed a Judge of the Court of Common
 Pleas.

Thomas Phinn, Esq., M. P., has been ap-
 pointed Counsel for the Admiralty in the room
 of Richard B. Crowder, Esq.

COLONIAL APPOINTMENTS.

The Honourable William Ogle Carr, late
 Puisne Judge at Ceylon, has been appointed
 Chief Justice of the Supreme Court, Ceylon,
 in the room of Sir A. Oliphant.

Edward Palmer, Esq., has been appointed
 Attorney-General at Prince Edward's Island,
 in the room of J. Hensley, Esq.

George Wright, Esq., has been appointed
 Registrar and Keeper of Plans at Prince Ed-
 ward's Island in the room of William Swabey,
 Esq.

Norman Campbell, Esq., has been appointed
 Registrar at Victoria, in the room of J. D. Pin-
 nock, Esq.

Edmund Grimes, Esq., has been appointed
 Auditor-General at Victoria, in the room of
 Hugh Culling Eardley Childers, Esq., ap-
 pointed Collector of Customs at Victoria.

SOUTH SEA TRUST BILL.

This Bill came on for Second Reading in
 the House of Lords on Thursday last, the 27th
 instant. Petitions were presented against the
 Trust Clauses, and Lord St. Leonards moved
 that the Bill be referred to a Select Committee
 of the House of Lords. Lord Redesdale con-
 curred in the motion, and Lord St. Leonards
 therefore reserved the statement of his objec-
 tions to the Bill.

We presume that the Select Committee will
 comprise all or most of the "Law Lords;" and
 the anomalous mode proposed by the Bill, of
 altering the Law relating to Trustees, by graft-
 ing upon a private Bill the clauses in question,

PROFESSIONAL LISTS.

DISSOLUTIONS OF PROFESSIONAL PART- NERSHIPS.

*From 24th March to 21st April, 1854, both in-
 clusive, with dates when gazetted.*

Belcher, Henry, Matthew Gray, and John
 Brewster, Whitby, Attorneys and Solicitors.
 March 31.

Harrison, Edwin Albert, and Joseph Brown,
 Birmingham, Attorneys and Solicitors. March
 31.

Hunt, Charles, and John Hunt Thursfield,
 Wednesbury, Attorneys and Solicitors. April
 18.

Lawrence, Benjamin, James Crowdy, and
 Thomas William Bowlby, 25, Old Fish Street,
 Doctors' Commons, Attorneys and Solicitors.
 March 31.

Southam, Samuel Phillips, and Adam Prat-
 tenton Trow, Cleobury Mortimer, Attorneys
 and Solicitors. April 11.

Williams, John, Edward Hett, and Joseph
 Bowman, 14, Gresham Street, City, Attorneys,
 Solicitors, and Conveyancers (so far as con-
 cerns the said John Williams). April 7.

COUNTRY COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY.

*Appointed under the 16 & 17 Vict. c. 78, with
 dates when gazetted.*

Acworth, Geo. Brindley, Rochester. April 21.

Baker, Isaac Palmer, Ipswich. March 28.

Cave, William Henry, Thatcham. April 4.

Clough, Benjamin Morley, Worksop. April

21.

Fiske, Edward Brown, Beccles. March 28.

Holt, William, Great Yarmouth. April 11.

Hunter, Charles William, Derby. April 18.

Jago, Edward, Plymouth. March 28.

Kough, Samuel Harley, Shrewsbury. Mar.

24.

McClare, Edward Wade, Nantwich. March

24.

Minett, Henry, Ross. April 11.

Powles, John Endell, Monmouth. April 11.

Ratcliffe, William Edward, Ryde, Isle of

Wight. April 4.

Roberts, William, jun., Coleford. April 11

Robinson, Thomas, Eccleashall. March 28.

Ryalls, John, Sheffield. March 24.

Rymer, Thomas, Liverpool. April 4.

will, we confidently trust, be rejected. If it be proper to alter the law, let it be done by a general and public Act. It is monstrous that a dying joint-stock company should be revived to administer private trusts, through the medium of directors, without any personal responsibility, and be paid for their services, contrary to the directions of the donor, testator, or settlor. Then the liability of the shareholders, who are to derive a profit from

the trusts, is to be limited to a certain sum, which may be vastly inadequate to the possible loss. If the new company be successful, the proposed guarantee fund will be obviously insufficient; and neither directors nor shareholders can be compelled to make up the deficiency which may arise, not from their default, but from the neglect, mistake, omission, misconduct, or fraud of the agents employed by the company in the execution of the trusts.

RECENT DECISIONS IN THE SUPERIOR COURTS.

Lords Justices.

In re Ingoldby. April 22, 1854.

LUNATIC.—APPOINTMENT OF NEW TRUSTEES.—SERVICE OF PETITION ON PARTIES INTERESTED.

A petition for the appointment of a new trustee to a lunatic, was directed to stand over for amendment where it appeared there were two vacancies in the trusteeship, and for service of the petition on the parties beneficially interested.

THIS was a petition for the appointment of a new trustee to this lunatic.

The Lords Justices, upon its appearing that there were two vacancies and that the petition had not been served on the parties beneficially interested, directed the petition to stand over for amendment in order that two trustees might be appointed, and for such service to be made.

In re Pickering, ex parte Harding. April 22, 1854.

BANKRUPTCY.—PROOF OF SUM AWARDED ALTHOUGH JUDGMENT NOT ENTERED BEFORE ACT OF BANKRUPTCY.

In an action at law, a verdict was taken for the plaintiff, subject to a reference. After the award, but before judgment was entered, the defendant committed an act of bankruptcy by filing a declaration of insolvency, and was adjudged a bankrupt: Held, dismissing with costs an appeal from Mr. Commissioner Holroyd, that the amount of the award was proveable under the bankruptcy.

THIS was a petition on behalf of the creditors' assignee in bankruptcy to expunge a proof, on appeal from Mr. Commissioner Holroyd. It appeared that upon an action being brought in October, 1845, against Mr. Wm. Pickering by a Mr. Thornthwaite, for a debt in respect of money lent, a set-off in accounts was put forward, and that in February, 1847, on its coming on for trial, a verdict was taken for the plaintiff for 10,000*l.*, subject to a reference. The referee afterwards died, and Mr. Welsby, who was appointed in his stead, awarded in May, 1853, a sum of 11,315*l.*, but before judgment was entered on the record the defendant committed an act of bankruptcy by filing a de-

claration of insolvency, and of which the creditor had notice, and was thereupon adjudicated a bankrupt. The Commissioner had admitted the proof, and this appeal was then presented from his decision.

Swaneton and Willes in support; *Rolt, Hogins, and Hardy*, contra, were not called on.

The Lords Justices said, the award was made before the act of bankruptcy, which was resorted to in consequence thereof. The verdict was to be for the amount the arbitrator should award, and independently of the question whether a verdict and an award were equal, there was a valid agreement for a valuable consideration, that the amount awarded should be the amount of the verdict, and that such verdict should be binding on the parties. The award was therefore good to show a debt, although there was no judgment before the act of bankruptcy, and in the absence of any grounds to show the award could be impeached in a Court of Law, the proof must be allowed, and the petition would accordingly be dismissed with costs.

Master of the Rolls.

Smith v. Adams. April 21, 1854.

HUSBAND AND WIFE.—RIGHT OF FREEBENCH IN COPYHOLDS SURRENDERED WITHOUT ADMISSION.—REVERSIONER.

The plaintiff's husband purchased certain copyholds, which were surrendered to the use of him and his heirs absolutely as to one moiety, and subject to a life estate as to the other, but he had never been admitted: Held, that the plaintiff, his widow, was entitled to freebench in the moiety which had been surrendered to him absolutely, but not in the other, of which he was only reversioner.

THIS was a bill filed by the widow for the administration of the estate of Mr. George Smith, who it appeared had purchased in July, 1845, certain copyhold property, which was surrendered to the use of him and his heirs absolutely as to one moiety, and subject to a life estate as to the other, but he had never been admitted. The plaintiff claimed to be entitled to freebench in the property.

Cur. ad. vult.

The Master of the Rolls said, that as to the

one moiety to which the husband had only a reversion the plaintiff was not entitled to free-bench, but as to the other, she was entitled in accordance with the decision of Lord Mansfield in *Vaughan v. Atkins*, 5 Burr. 2764, that a surrender was the essence of the conveyance, and the admission was only a form.

Attorney-General v. Davey. April 21, 1854.

INFORMATION.—SETTING ASIDE LEASE OF CHARITY LANDS AS IMPROVIDENT.—INQUIRIES.—COSTS.

On a decree to set aside a lease made in 1726 of charity lands as improvident, an inquiry was directed whether any and what permanent improvements had been made, and what allowance, if any, should be made in respect thereof, and for an account of the rents and profits since information filed,—the costs of the plaintiffs as between solicitor and client to come out of the first charity funds coming to their hands.

THIS was an information to set aside a lease granted in 1726 for a term of 500 years, at a rent of 6l. a year of certain charity property in St. Giles, Norwich, as improvident.

Lloyd for the relators stated the principle involved was the same as in *Attorney-General v. Magdalen College, Oxford*, not yet reported. R. Palmer for the defendants.

The Master of the Rolls accordingly made a decree setting aside the lease, and directed an inquiry whether any and what permanent improvements had been made and what allowance, if any, should be made in respect thereof, and for an account of the rents and profits since information filed,—the costs of the plaintiffs, as between solicitor and client, to come out of the first charity funds coming to their hands.

Vice-Chancellor Kindersley.

Trimmer v. Danby. April 21, 1854.

ANNUITY.—WHEN APPORTIONABLE UNDER THE 4 & 5 WM. 4, C. 22.

A testator bequeathed all his property in trust to pay the legacies and annuities given by the will, and the latter, although not given over specifically in terms, fell into the residue upon the death of the annuitants: Held, on the death of an annuitant eight days before her annuity became payable, that it was apportionable under the 4 & 5 Wm. 4, c. 22, s. 2.

BY an order in this suit for the administration of the estate of the late Mr. Turner, an annuity, to which Mrs. Danby was entitled under his fourth codicil, was payable on Dec. 19 last, but it appeared that the annuitant died on the 11th, whereupon a question arose whether the annuity was apportionable under the 4 & 5 Wm. 4, c. 22, s. 2.

Glasse and W. Forster, for the executors, contended it was not apportionable on the ground that it was not given consecutively to

two persons, and was not charged upon his property.

C. P. Cooper and T. H. Terrell for Mrs. Danby's representatives, contra.

The Vice-Chancellor, after referring to the preamble, which recited that "whereas by law, rents, annuities, and other payments due at fixed or stated periods are not apportionable (unless express provision be made for the purpose), from which it often happens that persons (and their representatives) whose income is wholly or principally derived from these sources by the determination thereof before the period of payment arrives are deprived of means to satisfy just demands, and other evils arise from such rents, annuities, and other payments not being apportionable, which evils require remedy," said, that the Act applied to the present case, and that there must be an apportionment. The annuity, although not specifically given over in terms, was so substantially, since it went over for the benefit of the residuary legatee, and all her property was bequeathed in trust to pay annuities and legacies given by the will.

Eyres v. Banks. April 22, 1854.

ADMINISTRATION SUIT.—FILING BILL BEFORE LETTERS OF ADMINISTRATION TAKEN OUT.

Held, that a bill for the administration of the estate of an intestate may be filed by any party interested therein before letters of administration have been granted.

IN this suit for the administration of the estate of an intestate, it appeared that the bill had been filed before letters of administration were granted.

Morris, for the defendant, accordingly asked for its dismissal; Tripp for the plaintiff.

The Vice-Chancellor said, that it was the undoubted right of every person, who was interested in the estate of a deceased intestate, to have his estate administered in Chancery, whether letters of administration had been taken out before the bill was filed or not, and the application was accordingly refused.

Vice-Chancellor Stuart.

Bates v. Brothers. April 22, 1854.

MOTION TO DISMISS FOR WANT OF PROSECUTION.—ORDER 29 OF AUGUST 7, 1852.—CASUS OMISSUS.

Held, that it is a casus omissus in the 29th Order of August 7, 1852, which enables a defendant to move to dismiss a bill for want of prosecution at any time after the expiration of three months from the time of his appearance, notwithstanding the time for closing the evidence has not expired upon the plaintiff having filed a replication where no answer is required.

Leave was therefore given to set down the cause for hearing for the following term,—costs to be costs in the cause.

THIS was a motion to dismiss this bill for

want of prosecution. It appeared that no answer had been required from the defendant, and that a replication had been filed. The time for closing the evidence had, however, not expired (reported on another point *ante*, p. 146).

J. V. Prior for the defendant in support.

W. D. Lewis for the plaintiff, *contra*, referred to the 29th Order of August 7, 1852, which directs, that "a defendant to a suit commenced by bill, who shall not have been required to answer the bill, and shall not have answered the same, shall be at liberty to apply for an order to dismiss the bill for want of prosecution, at any time after the expiration of three months from the time of his appearance, unless a motion for a decree or decretal order shall have been set down in the meantime, or the cause shall have been set down to be heard; and the Court may, upon such application if it shall think fit, make an order dismissing the bill, or make such order or impose such terms as may appear just and reasonable."

The *Vice-Chancellor* said, there was a *casus omissus* in the order which allowed the defendant to dismiss although the time for closing the evidence had not expired, and gave the plaintiff leave to set down the cause on or before the 1st day of Trinity Term,—costs to be costs in the cause.

Vice-Chancellor Wood.

Perry v. Turpin. April 21, 1854.

ANSWER.—EXCEPTIONS FOR INSUFFICIENCY AS TO DOCUMENTS.—PRACTICE.

Held, that since the 15 & 16 Vict. c. 86, it is unnecessary to insert a charge in the bill as to books and papers to enable the plaintiff to interrogate the defendant as to them.

The practice of excepting to answers on the ground of insufficiency as to documents, discountenanced, and proceeding by summons at Chambers recommended.

THESE were exceptions for insufficiency to the answer to the interrogatory in respect of documents.

Haig in support; *Rogers*, *contra*, on the ground that there was no charge or allegation in the bill on which to found the interrogatory.

The *Vice-Chancellor* said, that although before the 15 & 16 Vict. c. 86, it was usual to insert a charge in the bill as to books and papers to enable the plaintiff to interrogate the defendant as to them, it was not now necessary, the object of the Act being to make the bill as concise as possible and a simple narrative of facts material to the plaintiff's case. The practice, however, of excepting to answers on the ground of insufficiency as to documents would as much as possible be discountenanced,—the proceedings by summons being now so simple.

In re Lloyd. April 21, 1854.

MARRIED WOMEN.—PAYMENT OF PORTION OF FUND TO HUSBANDS.—CONSENT.—INTERPRETER.

An order was made on the petition of three married women for payment of a portion to which they were entitled of a fund in Court under the 10 & 11 Vict. c. 96, to their respective husbands, upon their appearance in Court and consent thereto being taken, and on its appearing that they could not understand English such consent was taken through the medium of an interpreter sworn in the usual manner.

THESE were petitions on behalf of three married women for payment out of Court of the shares in the residue of an estate to which they were entitled under a will and which had been paid in under the 10 & 11 Vict. c. 96. The petitioners were desirous of a portion being paid to their respective husbands, and on their appearing in Court to be examined as to their consent, it appeared that they were unable to understand English, whereupon an interpreter was sworn in the usual manner and the consent taken by his Honour.

Marett in support; *E. Bury* for the trustees.

The *Vice-Chancellor* made the order as prayed.

Court of Queen's Bench.

Olivo v. Hansom. April 21, 1854.

SLANDER.—INUENDO.—PRIVILEGED COMMUNICATION.

In an action for slander the innuendo in the declaration was, that the defendant meant the plaintiff was not a person to be trusted, and the Judge who presided at the trial directed the jury that as the defendant had not justified he admitted the things said were false, and that he meant the plaintiff was not a responsible person and held him out to be so. A rule was refused to set aside the verdict for the plaintiff and for a new trial on the ground of misdirection; and held, that the direction must be taken in connexion with the evidence which might show the defendant intended to convey an imputation he did not afterwards justify.

THIS was a motion to set aside the verdict for the plaintiff and for a new trial of this action for slander. It appeared that the defendant having gone to the warehouse of a person to buy goods had said,—"Do you still do business with Olivo?" and on the answer in the affirmative, had asked,—"Does he pay you in cash?" to which the person replied, inquiring why the defendant asked the question; and the defendant then said,—"You will see shortly;" and on the other person asking whether he had heard anything of him, had answered as before,—"You will see shortly." The innuendo set out in the declaration was, that the defendant meant the plaintiff was not a person to be trusted. On the trial, the learned Judge directed the jury that as the defendant

had not justified, he admitted the things said were false, and that he meant the plaintiff was not a responsible person, and held him out to be so. The plaintiff obtained a verdict with 40s. damages.

Wilkins, S. L., in support on the ground of misdirection, as there was no slander, and the communication was privileged.

The Court said, that the direction must be taken in connexion with the evidence, which might show that the defendant intended to convey an imputation he did not afterwards justify, and the rule was accordingly refused.

Stoessiger v. South Eastern Railway Company.
April 21, 1854.

CARRIERS' ACT. — BILL OF EXCHANGE OR SECURITY FOR MONEY. — DECLARATION OF VALUE OF PARCEL.

Held, that an instrument in the form of a bill of exchange and accepted, but without the name of a drawer or payee, is not a bill of exchange or security for money within the 11 Geo. 4 and 1 Wm. 4, c. 68, s. 1, so as to render the value of a parcel containing it liable to be declared and an increased charge paid.

A rule was therefore discharged to set aside the verdict for the plaintiff in an action to recover a sum of cash under 10l., but which would have been above that amount if the instrument were within s. 1.

A RULE nisi had been granted on Nov. 10 last, pursuant to leave reserved, to set aside the verdict for the plaintiff and enter it for the defendants in this action, which was brought to recover the value of the contents of a parcel sent by their line from Stroud to Birmingham, consisting of a bill of exchange for 11l. 10s., accepted by a Mr. Crittenden of Chatham, and taken by the traveller of a Mr. Gould, of Birmingham, in discharge of a debt, but without the name of a drawer, and a sum of 9l. 10s. in cash. The defendants pleaded that the parcel contained a security for money or writing of the value of 10l. and upwards, whose value had not been declared in accordance with the 11 Geo. 4, and 1 Wm. 4, c. 68, s. 1. On the trial before *Crompton*, J., at the Middlesex Sittings, on 3rd November, the plaintiff obtained a verdict.

A. *Wills* showed cause against the rule, and contended the instrument, although accepted, was without the name of a drawer or the payee, and was not within the 11 Geo. 4 and 1 Wm. 4, c. 68, s. 1, so as to make the value of the parcel above 10l., and liable to be declared.

Willes in support, on the ground that Mr. Gould, or any other person holding the bill for value, might have signed as drawer and sued

the acceptor, citing *Schultz v. Astley*, 2 Bing. N. C. 544.

The Court said, that the instrument when delivered to the defendants was neither a bill of exchange, promissory note, nor a security for money, and although a writing was of no intrinsic value, but was only an instrument of an imperfect character. The rule would therefore be discharged.

Llewellyn v. Gardiner and others. April 22, 1854.

EJECTMENT. — TENANT BY THE CURTESY. — CONSTRUCTION OF WILL. — EVIDENCE WHETHER CHILD BORN ALIVE. — NEW TRIAL.

A testator, by his will, devised certain land to his daughter for life, with remainder to his grandchildren, as tenants in common, with a proviso, that in case any of them died under 21, without lawful issue, his or her share should go among the others. It appeared that the plaintiff's wife died under 21, but had a child, which according to the verdict of the jury was born alive, and the presiding Judge was not dissatisfied with their verdict, although the evidence was contradictory: Held, that as the question of the child being born alive was purely one for the jury, and the plaintiff in that case would be entitled as tenant by the curtesy, the rule would be refused to set aside the verdict for him and enter it for the defendants in an action of ejectment.

THIS was a motion, pursuant to leave reserved, for a rule nisi to set aside the verdict for the plaintiff and enter it for the defendants in this action of ejectment. On the trial before *Wightman*, J., at the last Staffordshire Assizes, it appeared that the plaintiff claimed as tenant by the curtesy in the land in question, which was devised by the testator by will, dated in August, 1806, to his daughter for life, with remainder to his grandchildren as tenants in common, with a proviso, that in case any of such grandchildren died under 21 without lawful issue, his or her share should go to the other grandchildren. The plaintiff's wife was one of such grandchildren, and died under 21, and the question arose whether a child, which she had had, was born alive. The evidence upon this point was contradictory, but the jury found such child had been born alive.

Whateley, Q. C., in support, on the ground of the verdict being against evidence, and also that even if the child was born alive the plaintiff was not entitled, as his wife had died under 21.

The Court said, that as the presiding Judge was not dissatisfied with the verdict, and the question of the child having been born alive was purely one for the jury, the rule on the first ground would be refused. As to the other ground, the case of *Buckworth v. Thirkell*, 3 Bro. & P. 652, n., was expressly in point, and the rule would accordingly be refused.

¹ Which directs, that the value shall be declared where above 10l., if the parcel contains (*inter alia*) "bills," "orders, notes, or securities for payment of money," "writings."

Regina v. Inhabitants of Sandon. April 21, 1854.

INDICTMENT FOR NON-REPAIR OF HIGHWAY.—REMOVAL BY CERTIORARI.—PROCEDENDO.

Held, that the right to remove an indictment by certiorari can only be taken away by express words, and that therefore the 5 & 6 Wm. 4, c. 50, s. 107, did not apply to indictments for non-repair of a highway directed by justices to be preferred at the assizes, and a writ of procedendo was accordingly refused.

THIS was a motion for a rule nisi for a writ of procedendo in this indictment for the non-repair of a highway. It appeared that on the surveyor being summoned under the 5 & 6 Wm. 4, c. 50, the justices had ordered an indictment to be preferred at the Hertford assizes, but that before the assizes a certiorari had been obtained to remove the indictment.

Lush, in support, referred to s. 95, which enacts, that "if on the hearing of any such summons respecting the repair of any highway the duty or obligation of such repairs is denied by the surveyor on behalf of the inhabitants of the parish, or by any other party charged therewith, it shall then be lawful for such justices and they are hereby required to direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpoenaed, at the next assizes to be holden in and for the said county, or at the next general quarter sessions;" "provided, nevertheless, that it shall be lawful for the party against whom such indictment shall be so preferred at the quarter sessions as aforesaid to remove such indictment by certiorari or otherwise into his Majesty's Court of King's Bench;" and s. 107 enacts, that "no rate, nor any proceeding to be had touching the conviction of any offender against this Act," "shall be removed or removable" "by certiorari, or any other writ or process whatsoever, into any of his Majesty's Courts of Record at Westminster."

The Court said, that the right to a certiorari could only be taken away by express words, and that the 107th section did not apply. The rule was therefore refused.

Bridger and another v. Gay. April 22, 1854.

COMMON LAW PROCEDURE ACT, 1852.—AMENDMENT OF RECORD AT TRIAL UNDER s. 222 BY ADDING PLEA.—WHETHER COMPULSORY ON JUDGE.

A rule nisi was refused for a new trial on the ground that the presiding Judge had declined to allow an amendment by the addition of a plea on the record adapted to the state of facts proved in evidence; and held, that it is not compulsory on the Judge at the trial to direct such amendment under the 15 & 16 Vict. c. 76, s. 222, as it might set up an entirely new defence.

THIS was an action for money paid on the defendant's account to which he pleaded non-debted, and on the trial before Parke, B., at

the last Kingston Assizes, his lordship refused to allow an amendment by adding a plea to the record adapted to the state of facts proved in evidence. The plaintiff obtained a verdict, whereupon this motion was made for a rule nisi to set aside the verdict and for a new trial.

Bovill, in support, referred to the 15 & 16 Vict. c. 76, s. 222, which enacts, that "it shall be lawful for the Superior Courts of Common Law, and every judge thereof, and any Judge sitting at Nisi Prius, at all times to amend all defects and errors in any proceedings in civil causes, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as to the Court or Judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between parties shall be so made."

The Court said, that it would lead to very great injustice if it were compulsory on a Judge on the trial to make such an amendment, which might set up an entirely new defence, although of course, if the application had been made in time, such amendment would have been directed. The rule would therefore be refused.

Court of Common Pleas.

Hegarty and another v. Milne and another. April 21, 1854.

ACTION FOR WORK AND LABOUR.—AGREEMENT AS TO PART.—INADMISSIBLE IN EVIDENCE WITHOUT STAMP.

In support of an action for work and labour and materials provided, a memorandum was adduced which was drawn up by one of the defendants and signed by one of the plaintiffs, whereby the latter "agreed" to do a part of the work for 40l.: Held, that it was an agreement within the Stamp Act, and inadmissible in evidence without a stamp, and a rule was refused to set aside a nonsuit which had been directed.

THIS was a motion for a rule nisi to set aside the nonsuit and for a new trial of this action, which was brought to recover 99l. for work and labour, and materials provided on board the defendant's vessel, to which they pleaded never indebted and payment into Court. On the trial before Alderson, B., at the last Surrey assizes, a memorandum drawn up by one of the defendants and signed by one of the plaintiffs, whereby they agreed to do a part of the work for 40l., was held inadmissible for want of an agreement stamp, and a nonsuit was directed.

Shee, S. L., in support, on the ground that the memorandum was not an agreement having been signed by one of the plaintiffs only.

The Court said, that the paper was an agreement, or at all events a memorandum of an agreement for how much a portion of the work was to be done, and was within the Stamp Act, and not being stamped was therefore in-

admissible in evidence. The rule was accordingly refused.

Dale v. Beardman. April 22, 1854.

ACTION FOR FALSE IMPRISONMENT ON CHARGE OF FELONY. — REQUEST BY PLAINTIFF AS TO PLACE OF CUSTODY. — PLEA.

In an action brought to recover damages for false imprisonment, it appeared that upon the plaintiff being accused by the defendant of felony, and being taken into custody by a policeman, he had requested to be taken to the policeman's house until he could be brought before a magistrate. The plea set out such request in answer to the action: Held, that such request was not material, and a rule was refused to set aside the verdict for the plaintiff.

THIS was a motion for a rule nisi to set aside the verdict for the plaintiff and enter it for the defendant in this action, which was brought to recover damages for false imprisonment. It appeared on the trial before *Williams, J.*, at the last Chester assizes, that the plaintiff being accused of felony had been taken into custody by a policeman, and that he had requested to be taken to the policeman's house until he could be brought before a magistrate, when he was discharged. The plea set out such request in answer to the action.

M. Lloyd in support.

The Court said, that the request was not a material part of the plea setting it out, and refused the rule accordingly.

Haworth v. Barnes. April 22, 1854.

ACTION ON CONTRACT. — WHERE INSUFFICIENT CONTRACT IN WRITING WITHIN STATUTE OF FRAUDS. — NEW TERM.

It appeared that the plaintiff contracted to deliver a quantity of coals to the defendant, the terms being contained in a letter from the defendant to the plaintiff. The plaintiff in answering this letter, imported into the contract a new term as to a portion of the period thereby covered, but he had, however, carried out the contract according to the defendant's letter, for the period now sought to be recovered: Held, refusing a rule nisi to set aside a nonsuit, that there had been no sufficient contract in writing within the Statute of Frauds.

THIS was an action on a contract entered into by the plaintiff to deliver to the defendant a quantity of coals at a certain price per ton for a long period, the terms being contained in a letter from the defendant to the plaintiff. On the trial before *Cresswell, J.*, it appeared on putting in the plaintiff's answer to the defendant, that it was not an acceptance of the terms, but that it imported into the contract a new term as to a portion of the period covered by the defendant's letter. The plaintiff had, however, carried out the contract for the period now sought to be enforced in accordance with

the defendant's letter. A nonsuit was directed, on the ground that there was no sufficient contract in writing within the Statute of Frauds, whereupon this motion was made for a rule nisi to set it aside on the ground of misdirection.

Atherton, Q. C., in support.

The Court said, that although it was a hard case, there was no misdirection, and the rule was therefore refused.

Court of Exchequer.

Holmes v. Hoskins. April 22, 1854.

VERBAL CONTRACT FOR SALE OF CATTLE. — INSUFFICIENT ACCEPTANCE. — STATUTE OF FRAUDS.

On the sale by verbal contract of cattle to the defendant he had, upon his not having his cheque-book with him, arranged that the plaintiff should call in the evening. The defendant was then not at home, and afterwards on his meeting the plaintiff he had requested him to allow the beasts to remain on his farm for a few days when it would be more convenient to send them to his farm, and also to allow his man to feed them from the plaintiff's stack, which had been done. The defendant refused to complete, whereupon an action was brought: Held, that there had been no sufficient acceptance within the Statute of Frauds or delivery, and a rule was refused to set aside a nonsuit which had been directed.

THIS was a motion for a rule nisi to set aside the nonsuit and to enter the verdict for the plaintiff in this action, which was brought to recover a sum of 190*l.* for fifteen beasts sold to the defendant by verbal contract. On the trial before *Martin, B.*, at the last Taunton assizes it appeared that on the sale taking place, the defendant not having his cheque-book with him had arranged that the plaintiff should call on him in the evening, but that on his so doing he had not met the defendant. The defendant, when he next saw the plaintiff, had requested him to allow the beasts to remain on his premises for a few days when it would be more convenient to send them to his farm, and to allow his man to feed them from the plaintiff's stack, which had accordingly been done. The defendant afterwards refused to complete. A nonsuit was directed on the ground that there had been no acceptance within the Statute of Frauds.

Kinglelake, S. L., in support.

The Court said, that all which had been done was quite consistent with the fact of the plaintiff remaining in full possession of the beasts, which he would not have allowed the defendant to remove without payment of the money, and under the Statute of Frauds there must be shown an actual delivery, or an acceptance by the defendant of the subject-matter of the contract. The rule must therefore be refused.

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